

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

FILED

MAR 14 1986

EDWARD S. SANDITEN and SANDRA
SANDITEN HORNSTEIN,

Plaintiffs,

vs.

SANDITEN INVESTMENTS, LTD;
IRVING S. FENSTER; LOUIS Z.
FENSTER; DONALD M. MANN;
GERALD S. RICHARDS; EDGAR R.
SANDITEN, and WILFRED SANDITEN,

Defendants.

JACK C. SILVER, CLERK
U.S. DISTRICT COURT

No. 85-C-869-C

O R D E R

Now before the Court for its consideration is the motion of the defendants to dismiss pursuant to Rule 12(b) F.R.Cv.P.

The Court has reviewed the file including the pleadings, brief and exhibits involving the parties before this Court and before the District Court for Tulsa County; as well as the attached Oklahoma Supreme Court Order dated January 13, 1986 case No. 64,965.

The Court finds that defendants' motion to dismiss should be granted, under the abstention doctrine, in that there is similar litigation pending in the state court in which the controversy between the parties can be resolved. The Court abstains for the reasons of judicial economy and to avoid duplication of litigation.

In Heritage Land Co. v. Federal Deposit Ins. Co., 572 F.Supp. 1265 (W.D. Okla. 1983), the court said:


[W]hen state and federal courts contemporaneously exercise concurrent jurisdiction, the general rule is

that 'the pendency of an action in the state court is no bar to proceedings concerning the same matter in the Federal Court having jurisdiction.' But there is an exception to the general rule, based on pragmatic considerations of 'wise judicial administration, giving regard to conservation of judicial resources and comprehensive disposition of litigation.' Id. at 1266

The basic factors a federal court should consider in granting dismissal on the grounds of abstention is present in this case. The state court obtained jurisdiction first, the action has progressed further in that court than in this one, piecemeal litigation should be avoided and Oklahoma law in effect governs. See Heritage Land Co., supra at 1267.

WHEREFORE, premises considered, it is the Order of the Court that the motions of the defendants to dismiss is hereby granted for the reasons set forth herein.

IT IS SO ORDERED this 13th day of March, 1986.


H. DALE COOK
Chief Judge, U. S. District Court

Entered

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

MAR 14 1985

DAN WEATHERS and
DOLLIE WEATHERS,

Plaintiffs,

vs.

MAYES COUNTY, OKLAHOMA, and
MAYES COUNTY SHERIFF
H. W. JORDAN,

Defendants.

J. D. GARNER, CLERK
U.S. DISTRICT COURT

No. 85-C-1136-C ✓

O R D E R

Now before the Court for its consideration are the separate motions for dismissal of defendants Mayes County, Oklahoma ("Mayes County"), and Mayes County Sheriff H. W. Jordan ("Jordan") pursuant to Rule 12(b)(6) F.R.Cv.P. on the ground that the complaint fails to state a claim upon which relief can be granted.

This action was brought pursuant to 42 U.S.C. §1983 and alleges that defendant Jordan, pursuant to his authority as sheriff of Mayes County, made a telephone call to plaintiff Dollie Weathers and stated that outstanding felony arrest warrants existed for her husband, plaintiff Dan Weathers, and that Dan Weathers would be arrested unless certain personal property were delivered to a particular business in Mayes County, Oklahoma, in satisfaction of a debt. The Complaint alleges that no such arrest warrants existed, that this fact was known to defendant Jordan, and that the telephone call violated the defendants' constitutional rights to be protected from threat of unlawful arrest, invasion of privacy, and abuse of process. In addition,

plaintiffs allege pendant state law claims against both defendants, said claims being intentional infliction of emotional distress, slander, and extortion.

Initially, the Court must determine if the Complaint states a federal cause of action so as to properly confer jurisdiction upon this Court. There is no question that an unlawful arrest can give rise to a §1983 action. See, e.g., Garris v. Rowland, 678 F.2d 1264, 1271 (5th Cir. 1982). However, no authority exists for the assertion that the threat of an unlawful arrest violates a constitutional right. A threat of infringement does not constitute actual infringement. See Macko v. Byron, 760 F.2d 95, 97 (5th Cir. 1985).

As for the alleged invasion of privacy, some courts have held that "under some circumstances there can be such a gross abuse of privacy as to amount to an abridgement of fundamental constitutional guarantees," Morris v. Danna, 411 F.Supp. 1300, 1303 (D. Minn. 1976). However, this Court does not view a single telephone call as "gross abuse," nor indeed under any generally accepted definition does Jordan's alleged action constitute invasion of privacy at common law. See generally Prosser and Keeton on Torts §117 (5th ed. 1985).

In their final attempt to assert federal jurisdiction, the plaintiffs state that Jordan's alleged actions constitute malicious abuse of process. An action under §1983 is available for this tort. See, e.g., Jennings v. Shuman, 567 F.2d 1213 (3d Cir. 1977). The complaint in the case at bar has failed to demonstrate the tort was committed. In Houghton v. Foremost

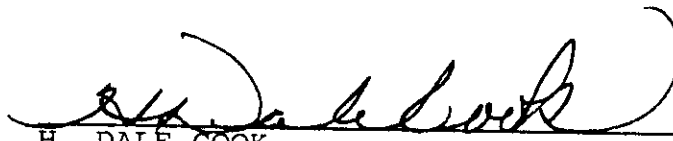
Financial Services Corp., 724 F.2d 112 (10th Cir. 1983), the Court stated:

Abuse of process occurs when legal process is used for an improper purpose, to accomplish an end not lawfully obtainable, or to compel someone to do some collateral thing he could not legally be compelled to do. The elements of this tort are generally articulated as an illegal or improper use of the process for an ulterior or improper purpose with resulting damage to the plaintiff. Id. at 116 (citations omitted).

There is no allegation in the Complaint that Jordan made use of any legal process, whether for a proper or improper purpose. He allegedly made a telephone call and threatened to execute arrest warrants which did not in fact exist. Such actions do not constitute abuse of process. The Court must therefore conclude that the Complaint fails to state a cause of action under 42 U.S.C §1983. Thus, as there is no federal claim before the Court, no jurisdiction exists over the alleged state claims. See Dunton v. County of Suffolk, 729 F.2d 903, 910-11 (2d Cir. 1984).

Accordingly, it is the Order of the Court that the motions for dismissal of defendants Mayes County, Oklahoma, and Mayes County Sheriff H. W. Jordan should be and hereby are granted.

IT IS SO ORDERED this 17th day of March, 1986.


H. DALE COOK
Chief Judge, U. S. District Court

Entered

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

FILED

MAR 14 1986

Jack C. Silver, Clerk
U. S. DISTRICT COURT

9K

INTER-TRUCKING SYSTEMS, INC.)
a Texas corporation)

Plaintiff(s),)

vs.)

NTC of AMERICA, INC., an)
Oklahoma corporation)

Defendant(s).)

No. 85-C-1105-C ✓

ADMINISTRATIVE CLOSING ORDER

The defendant having filed its petition in bankruptcy and these proceedings being stayed thereby, it is hereby ordered that the Clerk administratively terminate this action in his records, without prejudice to the rights of the parties to reopen the proceedings for good cause shown for the entry of any stipulation or order, or for any other purpose required to obtain a final determination of the litigation.

IF, within 60 days of a final adjudication of the bankruptcy proceedings, the parties have not reopened for the purpose of obtaining a final determination herein, this action shall be deemed dismissed with prejudice.

IT IS SO ORDERED this 17th day of March, 1986.

[Signature]
UNITED STATES DISTRICT JUDGE

Entered

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

FILED

MAR 14 1986

1st C. Clerk, Clerk
U. S. DISTRICT COURT

CURB-IT CORPORATION, an Oklahoma
corporation,

Plaintiff,

v.

No. 85-C-1107 C ✓

LMC COMMUNICATIONS, INC., a
California corporation,

Defendant.

DISMISSAL WITHOUT PREJUDICE

Comes now the Plaintiff, Curb-It Corporation, and hereby moves this Court
to dismiss the above-styled suit, without prejudice, as against the Defendant,
LMC Communications, Inc.

DATED this 14th day of March, 1986.

J. Stephen Welch

J. Stephen Welch
Attorney for Plaintiff

OF COUNSEL:

SCHUMAN AND WELCH, P.C.
Suite 205, 51 Yale Building
5110 South Yale
Tulsa, Oklahoma 74135
918/496-0491
OBA 9453

FILED

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

MAR 14 1986

GARY L. "SCOTT" DICKEY

Movant,

v.

UNITED STATES OF AMERICA,

Respondent.

Jack C. Silver, Clerk
U. S. DISTRICT COURT

No. 85-C-828-C
No. 82-CR-87-12-C

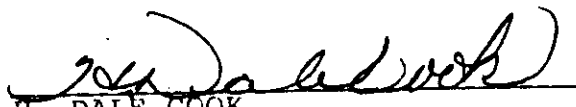
ORDER

The Court has for consideration the Findings and Recommendations of the Magistrate filed on February ²⁷~~26~~, 1986 in which the Magistrate recommends that the Motion for Relief under § 2255 be denied. No exceptions or objections have been filed and the time for filing such exceptions or objections has expired.

After careful consideration of the record and the issues presented, the Court has concluded that the Findings and Recommendations of the Magistrate should be and hereby are affirmed and adopted.

It is therefore Ordered that the Motion to Vacate, Set Aside or Correct Sentence pursuant to 28 U.S.C. § 2255 be and is hereby denied.

It is so Ordered this 14th day of March, 1986.


H. DALE COOK
CHIEF JUDGE

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

FILED

MAR 14 1986

JOSEPH L. COX, JR.,
Petitioner,
v.
UNITED STATES OF AMERICA,
Respondent.

No. 85 C-501-C
No. 81-CR-61-C

John D. Silver, Clerk
U.S. DISTRICT COURT

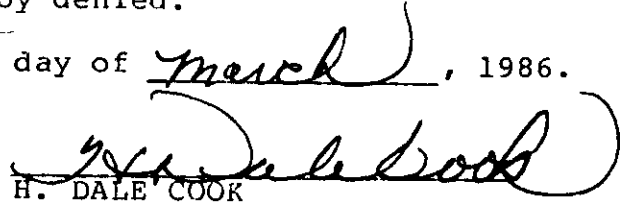
O R D E R

The Court has for consideration the Findings and Recommendations of the Magistrate filed February 27, 1986 in which the Magistrate recommended that Petitioner's Motion to Vacate and Set Aside his sentence be denied. No exceptions or objections have been filed and the time for filing such exceptions or objections has expired.

After careful consideration of the record and the issues, the Court has concluded that the Findings and Recommendations of the Magistrate should be and hereby are affirmed and adopted by the Court.

It is therefore Ordered that Petitioner's Motion to Vacate and Set Aside his Sentence is hereby denied.

It is so Ordered this 14th day of March, 1986.


H. DALE COOK
CHIEF JUDGE

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

UNITED STATES OF AMERICA

Plaintiff(s),

vs.

101.20 acres of land, et al.,
Osage County

Defendant(s).

No. 84-C-156-C

FILED

MAR 14 1986

Jack C. Silver, Clerk
U. S. DISTRICT COURT

JUDGMENT DISMISSING ACTION
BY REASON OF SETTLEMENT

The Court has been advised by counsel that this action has been settled, or is in the process of being settled. Therefore, it is not necessary that the action remain upon the calendar of the Court.

IT IS ORDERED that the action is dismissed without prejudice. The Court retains complete jurisdiction to vacate this Order and to reopen the action upon cause shown that settlement has not been completed and further litigation is necessary.

IT IS FURTHER ORDERED that the Clerk forthwith serve copies of this Judgment by United States mail upon the attorneys for the parties appearing in this action.

Dated this 14 day of March, 19 86.


UNITED STATES DISTRICT JUDGE

6711-003/JLR
3-13-86/mab

IN THE UNITED STATE DISTRICT COURT IN AND FOR THE
NORTHERN DISTRICT OF OKLAHOMA

SERVICE DRILLING CO., an Oklahoma)
corporation; et al.,)

Plaintiffs,)

vs.)

UNITED GAS PIPE LINE COMPANY,)
a Delaware corporation,)

Defendant.)

Case No. 86-C-166-E

DISMISSAL WITHOUT PREJUDICE
BY PLAINTIFFS CLIFTON BRYAN & NINETTE BRYAN

COME NOW the Plaintiffs, Clifton Bryan & Ninette Bryan, and individually dismiss this action without prejudice against the Defendant, United Gas Pipe Line Company. This Dismissal is intended and shall be deemed a dismissal only as to those claims asserted by Clifton Bryan & Ninette Bryan, individually against the Defendant, and shall in no manner affect or alter the claims of other Plaintiffs herein.

PRAY, WALKER, JACKMAN,
WILLIAMSON & MARLAR

By: 

JOHN L. RANDOLPH, JR.
900 ONEOK Plaza
100 West 5th Street
Tulsa, Oklahoma 74103
(918)584-4136

ATTORNEYS FOR PLAINTIFFS

CERTIFICATE OF MAILING

I, JOHN L. RANDOLPH, JR., do hereby certify this 14th day of March, 1986, that a true, correct and exact copy of the foregoing Dismissal Without Prejudice was deposited in the U. S. Mail, postage fully prepaid thereon, to:

UNITED GAS PIPE LINE COMPANY
c/o The Corporation Company
735 First National Building
Oklahoma City, Oklahoma 73102



JOHN L. RANDOLPH JR.

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

FILED

MAR 14 1986

BOBBY E. MOFFITT,

Petitioner,

v.

STATE OF OKLAHOMA, DAVID MOSS,
DISTRICT ATTORNEY,

Respondents.

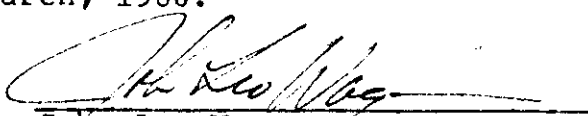
No. 85-C-1012-E

Jack C. Sibert, Clerk
U. S. DISTRICT COURT

O R D E R

Comes now before the Magistrate Petitioner Bobby E. Moffit's Application for a Writ of Habeas Corpus attacking a state detainer. The Magistrate finds that this petition is identical to the application filed by this same petitioner in Case No. 85-C-995-E now pending before the Court. It is therefore Ordered that the Petition in the above styled case be dismissed as duplicitous pursuant to Rule 9(b) of the rules governing § 2254 cases.

Dated this 14th day of March, 1986.


John Leo Wagner
United States Magistrate

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

UNITED STATES OF AMERICA,

Plaintiff,

vs.

REBECCA K. SHRUM, a/k/a BECKY
SHRUM, OKLAHOMA MEDICAL
COLLECTION SERVICES, INC.,
GOODYEAR TIRE and RUBBER
COMPANY, INC., and DENTON'S
FASHION CENTER,

Defendants.

FILED

MAR 14 1986

W. C. SIBEL, Clerk
U. S. District Court

CIVIL ACTION NO. 85-C-827-E

JUDGMENT OF FORECLOSURE

This matter comes on for consideration this 14 day
of March, 1986. The Plaintiff appears by Layn R.
Phillips, United States Attorney for the Northern District of
Oklahoma, through Nancy Nesbitt Blevins, Assistant United States
Attorney; the Defendant, Denton's Fashion Center appears by
Nita J. Bridwell, President; and the Defendants Rebecca K. Shrum,
a/k/a Becky Shrum, Oklahoma Medical Collection Services, Inc.,
and Goodyear Tire and Rubber Company, Inc., appear not, but make
default.

The Court being fully advised and having examined the
file herein finds that Defendant, Rebecca K. Shrum, a/k/a Becky
Shrum, was served with Summons and Complaint on October 15, 1985;
that Defendant, Oklahoma Medical Collection Services, Inc. was
served with Summons and Complaint on October 3, 1985; that the
Defendant, Goodyear Tire and Rubber Company, Inc. was served with
Summons and Complaint on January 2, 1986; and that Defendant

Denton's Fashion Center acknowledged receipt of Summons and Complaint on September 15, 1985.

It appears that the Defendant, Denton's Fashion Center filed its Answer herein on September 23, 1985; and that the Defendants Rebecca K. Shrum, a/k/a Becky Shrum, Oklahoma Medical Collections Services, Inc., and Goodyear Tire and Rubber Company Inc., have failed to answer and their default have therefore been entered by the Clerk of this Court.

The Court further finds that this is a suit based upon a promissory note and for foreclosure of a real estate mortgage securing said promissory note upon the following described real property located in Washington County, Oklahoma, within the Northern Judicial District of Oklahoma:

Lot Eighteen (18), Eastman Second Addition
to Ochelata, Washington County, Oklahoma.

That on September 13, 1978, Rebecca K. Shrum, and Michael G. Shrum executed and delivered to the United States of America, acting through the Farmers Home Administration their promissory note in the amount of \$26,500.00, payable in monthly installments, with interest thereon at the rate of eight and one-half (8 1/2) percent per annum.

That as security for the payment of the above-described note, Rebecca K. Shrum, and Michael G. Shrum executed and delivered to the United States of America, acting through the Farmers Home Administration, a real estate mortgage dated September 13, 1978, covering the above-described property. Said

mortgage was recorded on September 13, 1978, in Book 713, Page 765, in the records of Washington County, Oklahoma.

The Court further finds that Michael G. Shrum has been release from personal liability for the note and mortgage referred to above by virtue of a Release from Personal Liability dated July 11, 1984.

The Court further finds that on September 7, 1983, Rebecca K. Shrum executed and delivered to the United States of America, acting through the Farmers Home Administration a Reamortization and/or Deferral Agreement by which the entire unpaid amount of the note referred to above was made principal.

The Court further finds that Defendant, Rebecca K. Shrum, a/k/a Becky Shrum, made default under the terms of the aforesaid promissory note, mortgage, and Reamortization and/or Deferral Agreement by reason of her failure to make the monthly installments due thereon which default has continue and that by reason thereof the Defendant, Rebecca K. Shrum, a/k/a Becky Shrum, is indebted to the Plaintiff in the principal sum of \$26,940.94, plus accrued interest of \$2,302.55 as of May 20, 1985, plus interest thereafter at the rate of \$6.2739 per day until judgment, plus interest thereafter at the legal rate until fully paid, and the costs of this action accrued and accruing.

The Court further finds that the Defendant, Denton's Fashion Center, has a lien on the property which is the subject matter of this action by virtue of a judgment entered March 26,

1980, in the case of Denton's Fashion Center v. Becky Shrum, Case No. SC80-169, Washington County, Oklahoma, which judgment is in the sum of \$220.99 as of September 15, 1985. Said lien is inferior to the interest of the Plaintiff, United States of America.

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that the Plaintiff have and recover judgment against Defendant, Rebecca K. Shrum, a/k/a Becky Shrum, in the principal sum of \$26,940.94, plus accrued interest of \$2,302.55 as of May 20, 1985, plus interest thereafter at the rate of \$6.2739 per day until judgment, plus interest thereafter at the current legal rate of 7.06 percent per annum until paid, plus the costs of this action accrued and accruing.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the Defendant, Denton's Fashion Center, have and recover judgment in the amount of \$220.99 as of September 15, 1985, plus the costs of this action.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that upon the failure of said Defendant, Rebecca K. Shrum, a/k/a Becky Shrum, to satisfy the money judgment of the plaintiff herein, an Order of Sale shall be issued to the United States Marshal for the Northern District of Oklahoma, commanding him to advertise and sell with appraisement the real property involved herein and apply the proceeds of the sale as follows:

First:

In payment of the costs of this action
accrued and and accruing incurred by the

Plaintiff, including the costs of sale of
said real property;

Second:

In payment of the judgment rendered herein in
favor of the Plaintiff.

Third:

In payment of the judgment rendered herein in
favor of the Defendant, Denton's Fashion Center.

The surplus from said sale, if any, shall be deposited
with the Clerk of the Court to await further Order of the Court.


IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that from
and after the sale of the above-described real property, under
and by virtue of this judgment and decree, all of the Defendants
and all persons claiming under them since the filing of the
Complaint, be and they are forever barred and foreclosed of any
right, title, interest or claim in or to the subject real
property or any part thereof.

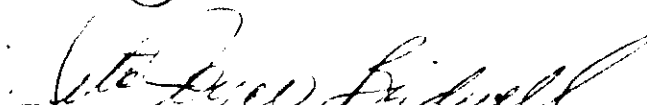
S/ JAMES O. ELISON

UNITED STATES DISTRICT JUDGE

APPROVED:

LAYN R. PHILLIPS
United States Attorney


NANCY NESBITT BLEVINS
Assistant United States Attorney


NITA J. BRIDWELL, PRESIDENT
Denton's Fashion Center

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

FILED

MAR 14 1985

JACK C. SILVER, CLERK
U.S. DISTRICT COURT

NEIL G. WHITE,

Petitioner,

v.

MACK ALFORD, et al.,

Respondents.

No. 85-C-517-E

O R D E R

Comes now before the Magistrate Petitioner's Application for a Writ of Habeas Corpus pursuant to Title 28 U.S.C. § 2254. Petitioner is presently incarcerated in the Stringtown Correctional Center, Stringtown, Oklahoma pursuant to a sentence of 15 years imprisonment subsequent to his plea of guilty to the charge of robbery with a firearm in the District Court of Tulsa County, Case No. CRF-84-61. Petitioner filed an Application for Post-Conviction Relief pursuant to the Post-Conviction Procedures Act, 22 O.S. 1981, § 1080, et seq. His application was denied by the Tulsa County District Court. Petitioner appealed the denial to the Oklahoma Court of Criminal Appeals. On February 1, 1985 the Appellate Court affirmed the denial of post-conviction relief. Thereupon, Petitioner filed the case now before the Court attacking the voluntariness of his guilty plea. Respondents concede that Petitioner has exhausted his state remedies.

Petitioner contends that he was denied the right to make an intelligent and knowing plea of guilty because he was not advised of the mandatory sentence required by law. He states that had he

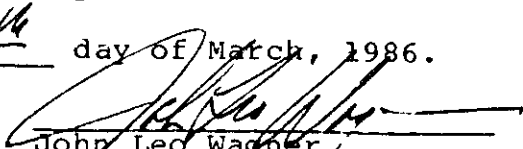
been informed that he would have to be incarcerated for ten years before he could be considered for parole or work credits he would not have plead guilty pursuant to the plea agreement.

Potential parole eligibility is an indirect and collateral consequence of a guilty plea and a defendant need not be informed of it prior to entering his plea. Hill v. Lockhart, 731 F.2d 568 (8th Cir. 1984). Rule 11 of the Federal Rules of Criminal Procedure requires that a defendant be informed of any mandatory minimum sentencing provisions before accepting a guilty plea, but the rule does not mandate advisement of the minimum portion of a sentence that might have to be served prior to possible parole. Hunter v. Fogg, 616 F.2d 55 (2nd Cir. 1980). Likewise, Oklahoma law does not require that information concerning parole eligibility be explained to a defendant prior to accepting a plea. King v. State, 553 P.2d 529 (Okla. Cr. 1976). The court cannot apply to a state judge taking a plea a higher standard than Rule 11 prescribes for a federal judge performing the same function. Hill, 441 U.S. at 570; Hicks v. Oliver, 523 F.Supp. 64 (D.Kan. 1981).

For the above reasons the Magistrate finds that failure to advise defendant of parole eligibility does not vitiate his plea of guilty in this case.

It is therefore Ordered that Petitioner's Application for Writ of Habeas Corpus be and is hereby denied.

It is so Ordered this 14th day of March, 1986.


John Leo Wagner
United States Magistrate

FILED

IN THE UNITED STATES DISTRICT COURT WITHIN AND FOR
THE NORTHERN DISTRICT OF OKLAHOMA

MAR 14 1986

Don L. Silver, Clerk
U. S. DISTRICT COURT

DOROTHY L. SHELTON,)
)
Plaintiff,)
)
vs.)
)
AETNA LIFE INSURANCE COMPANY,)
)
Defendant.)

88-C-68-E
Case No.: ~~CJ-85-00032~~

ORDER OF DISMISSAL

ON this 14th day of March, 1986, upon the written application of the parties for a Dismissal with Prejudice of the Complaint and all causes of action therein, the Court having examined said Application, finds that said parties have entered into a compromise settlement covering all claims involved in the Complaint and have requested the Court to dismiss said Complaint with prejudice to any future action, and the Court being fully advised in the premises, approves said settlement and finds that said Complaint should be dismissed pursuant to said application.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED by the Court that the Complaint and all causes of action of the Plaintiff filed herein against the Defendant be and the same hereby are dismissed with prejudice to any future action.

JUDGE OF THE UNITED STATES DISTRICT COURT,
NORTHERN DISTRICT OF OKLAHOMA

APPROVALS:

KEN V. CUNNINGHAM,

Ken Cunningham
Attorney for the Plaintiff,

STEPHEN C. WILKERSON,

Stephen C. Wilkerson
Attorney for the Defendant.

Entered

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

FILED

MAR 14 1986

428
Jack C. Soper, Clerk
U. S. DISTRICT COURT

UNITED STATES OF AMERICA,)
)
Plaintiff,)
)
vs.)
)
EDWARD D. BUNTIN, et al.,)
)
Defendants.)

Case No. 85-C-872-B ✓

JUDGMENT OF FORECLOSURE

This matter comes on for consideration this 14th day of March, 1986. The Plaintiff appears by Layn R. Phillips, United States Attorney for the Northern District of Oklahoma, through Phil Pinnell, Assistant United States Attorney; the Defendants, Edward D. Buntin, Terry B. Buntin, County Treasurer, Osage County, Oklahoma and Board of County Commissioners, Osage County, Oklahoma, appear not, but make default.

The Court being fully advised and having examined the file herein finds that the Defendant Board of County Commissioners, Osage County, Oklahoma, acknowledged receipt of Summons and Complaint on September 19, 1985; that the Defendant County Treasurer, Osage County, Oklahoma, acknowledged receipt of Summons and Complaint on September 19, 1985; that the Defendant Edward D. Buntin acknowledged receipt of Summons and Complaint on September 20, 1985; and that the Defendant Terry B. Buntin was served with Summons and Complaint on November 6, 1985. It further appears that the Defendants, Edward D. Buntin, Terry B. Buntin, Board of County Commissioners, Osage County, Oklahoma and

County Treasurer, Osage County, Oklahoma have failed to answer. The default of the Defendants Edward D. Buntin and Terry B. Buntin has been entered by the Clerk of this Court on February 24, 1986. The default of the Defendants County Treasurer and Board of County Commissioners, Osage County, Oklahoma has been entered by the Clerk of this Court on March 12, 1986.

The Court further finds that this is a suit based upon a certain promissory note for foreclosure of a real estate mortgage securing said promissory note upon the following described real property located in Osage County, Oklahoma, within the Northern Judicial District of Oklahoma:

Lot 6, Block 2, Hillview Addition to Skiatook, Osage County, Oklahoma, according to the official survey thereof, subject to however, all valid outstanding easements, rights-of-way, mineral leases, mineral reservations, and mineral conveyances of record

That on April 11, 1980, Edward D. Buntin and Terry B. Buntin executed and delivered to the United States of America, acting through the Farmers Home Administration, their promissory note in the amount of \$29,500.00, payable in monthly installments, with interest thereon at the rate of 10 percent per annum.

That as security for the payment of the above-described promissory note, Edward D. Buntin and Terry B. Buntin executed and delivered to the United States of America, acting through the Farmers Home Administration a real estate mortgage dated April 11, 1980, covering the above-described property. Said mortgage was recorded on April 11, 1980, in Book 578, Pages 661-664, in the records of Osage County, Oklahoma.

The Court further finds that the Defendants, Edward D. Buntin and Terry B. Buntin made default under the terms of the aforesaid promissory note and mortgage by reason of their failure to make monthly installments due thereon, which default has continued and that by reason thereof the Defendants, Edward D. Buntin and Terry B. Buntin, are indebted to the Plaintiff in the sum of \$30,577.94 plus accrued interest of \$7,519.81 as of January 9, 1986, plus interest thereafter at the rate of \$8.3766 per day until judgment, plus interest thereafter at the legal rate until fully paid, and the costs of this action accrued and accruing.

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that the Plaintiff have and recover judgment against the Defendants, Edward D. Buntin and Terry B. Buntin in the principal amount of \$30,577.94 plus accrued interest of \$7,519.81 as of January 9, 1986, plus interest thereafter at the rate of \$8.3766 per day until judgment plus interest thereafter at the legal rate of 7.06 percent per annum until paid, plus costs of this action accrued and accruing.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that upon the failure of said Defendants, Edward D. Buntin and Terry B. Buntin to satisfy the money judgment of the Plaintiff herein, an order of sale shall be issued to the United States Marshal for the Northern District of Oklahoma, commanding him to advertise and sell with appraisement the real property involved herein and apply the proceeds of the sale as follows:

First, in payment of the costs of this action accrued and accruing incurred by the Plaintiff, including costs of the sale of said real property; Second, in payment of the judgment rendered herein in favor of the Plaintiff.


The surplus from said sale, if any, shall be deposited with the Clerk of the Court to await further order of the Court.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that from and after the sale of the above-described real property under and by virtue of this Judgment and Decree the Defendants and all persons claiming under them since the filing of this Complaint, be and they are forever barred and foreclosed of any right, title, interest or claim in or to the subject real property or any part thereof.

S/ THOMAS R. BRETT

THOMAS R. BRETT
U.S. DISTRICT JUDGE

APPROVED:



PHIL PINNELL
Assistant United States Attorney

Entered

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

UNITED STATES OF AMERICA,
Plaintiff,

vs.

ONE 1984 FORD PICK-UP,
VIN 1FTDF15H6EPB51279,
Defendant.

FILED

MAR 14 1986

Jack C. Silver, Clerk
U. S. DISTRICT COURT

Case No. 85-C-809-B

STIPULATION OF DISMISSAL

COME NOW the parties hereto, by their respective counsel, and hereby stipulate and agree that this action is dismissed pursuant to Rule 41 of the Federal Rules of Civil Procedure, and that the Defendant One 1984 Ford Pick-Up, VIN 1FTDF15H6EPB51279 may be returned to Claimant, Albert Creekmore.

Nancy Nesbitt Blevins
NANCY NESBITT BLEVINS
Assistant United States Attorney

Curtis A. Parks
CURTIS A. PARKS
Attorney for Claimant
Albert Creekmore

Entered

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

UNITED STATES OF AMERICA,

Plaintiff,

vs.

ONE 1984 FORD PICK-UP,
VIN 1FTDF15H6EPB51279,

Defendant.

No. 85-C-809-B

FILED

MAR 14 1986 *af*

Jack C. Silver, Clerk
U. S. DISTRICT COURT

DISMISSAL AND ABANDONMENT OF CLAIM

COMES NOW the Claimant, Albert Creekmore, by his attorneys, Parks & Beard, and does hereby dismiss his claim in accordance with the Stipulation for Compromise previously executed by Plaintiff and Claimant. This claim is hereby dismissed with prejudice and without costs.

DATED this 14th day of March, 1986.

PARKS & BEARD

BY

Curtis A. Parks

CURTIS A. PARKS
1736 South Carson
Tulsa, Oklahoma 74119
918/587-7113

ATTORNEY FOR CLAIMANT

CERTIFICATE OF DELIVERY

The undersigned hereby certifies that he hand delivered a true and correct copy of the above and foregoing instrument, this 14th day of March, 1986, to the Assistant United States Attorney, Nancy Nesbitt Blevins.

Curtis A. Parks

CURTIS A. PARKS

Entered

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

UNITED STATES OF AMERICA,

Plaintiff,

vs.

ONE 1984 FORD PICK-UP,
VIN 1FTDF15H6EPB51279,

Defendant.

FILED

MAR 14 1986 *af*

Jack C. Silver, Clerk
U. S. DISTRICT COURT

CIVIL ACTION NO. 85-C-809-BV ✓

STIPULATION FOR COMPROMISE

It is hereby stipulated between the Plaintiff, United States of America, and the Claimant, Albert E. Creekmore, by and through their respective counsel, as follows:

1. That the Plaintiff does hereby agree to return the property which is the subject of the above-captioned forfeiture action to the Claimant upon the terms indicated below.

2. The Claimant agrees to pay to the Plaintiff the sum of \$2,425.00, said sum to consist of the cash bond in the amount of \$925.00 posted herein by the Claimant with the United States Customs Service on July 17, 1985, and further a cashier's check made payable to the Department of Justice in the sum of \$1,500.00.

3. The Claimant agrees to accept these terms in full settlement and satisfaction of any and all claims and demands which he or his assigns may have against the United States of America and its agents and employees on account of the arrest and seizure of the subject property.

4. This stipulation shall forever and completely bar any action or any claim in any tribunal, in any manner whatsoever, whether state, federal, or otherwise, by the Claimant herein concerning the above-captioned forfeiture action.

5. The intent and purpose of this stipulation is to return the subject property to the Claimant and simultaneously to protect the United States of America and its present and former employees agents, servants, and personnel from any claims or suits related to this action.

6. That this agreement shall not and does not constitute an admission of liability or fault on the part of any of the undersigned parties or their present or former agents, servants, employees, or others.

7. That as a part of this agreement, the Claimant shall file with the Clerk of this Court a dismissal and abandonment of his claim herein with prejudice and without costs.

IT IS SO AGREED this 14th day of March, 1986.

UNITED STATES OF AMERICA

LAYN R. PHILLIPS
United States Attorney

Nancy Nesbitt Blevins
NANCY NESBITT BLEVINS
Assistant United States Attorney

Curtis A. Parks
CURTIS A. PARKS
Attorney for Claimant
Albert E. Creekmore

Entered

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

FILED

MAR 14 1986

Jack C. Silver, Clerk
U. S. DISTRICT COURT

UNITED STATES OF AMERICA,

Plaintiff,

vs.

CAROLYN S. HUMPHREY;
COUNTY TREASURER, Craig
County, Oklahoma; BOARD OF
COUNTY COMMISSIONERS, Craig
County, Oklahoma; MID AMERICA
CONSTRUCTION and SUPPLY
COMPANY; BRIERCROFT SERVICE
CORPORATION,

Defendants.

CIVIL ACTION NO. 85-C-776-B

JUDGMENT OF FORECLOSURE

THIS MATTER COMES on for consideration this 14th day
of March, 1986. The Plaintiff appears by Layn R.
Phillips, United States Attorney for the Northern District of
Oklahoma, through Phil Pinnell, Assistant United States Attorney;
the Defendant Carolyn S. Humphrey appearing not, the Defendants
County Treasurer of Craig County and Board of County
Commissioners of Craig County appearing by their attorney of
record David R. Poplin, Assistant District Attorney of Craig
County, the Defendant Mid America Construction and Supply
Company, appearing not, having previously filed its Disclaimer on
August 23, 1985, disclaiming any right, title or interest in the
real property involved in this action, and the Defendant,
Briercroft Service Corporation, appearing not.

The Court being fully advised and having examined the
file herein finds that the Defendant, Carolyn S. Humphrey,

acknowledged receipt of Summons and Complaint on August 29, 1985; the Defendant, Mid America Construction and Supply Company, acknowledged receipt of Summons and Complaint on August 20, 1985; the Defendant, Craig County Treasurer, acknowledged receipt of Summons and Complaint on August 20, 1985; the Defendant, Board of County Commissioners, Craig County, acknowledged receipt of Summons and Complaint on August 20, 1985; the Defendant, Briercroft Service Corporation, acknowledged receipt of service no later than February 11, 1986.

It appears that the Defendant, Carolyn S. Humphrey, has failed to answer and her default has been entered by the Clerk of this Court on December 6, 1985; that the Defendant, Mid America Construction and Supply Company, filed its Disclaimer on August 23, 1985, said Disclaimer being evidenced on the acknowledgment of receipt of Summons and Complaint by said Defendant; that the Defendants, County Treasurer of Craig County and Board of County Commissioners of Craig County, Oklahoma, filed their Answer on August 26, 1985; that the Defendant, Briercroft Service Corporation, has failed to answer and its default has been entered by the Clerk of this Court on March 5, 1986.

The Court further finds that this is a suit based upon a certain promissory note for foreclosure of a real estate mortgage securing said promissory note upon the following described real property located in Craig County, Oklahoma, within the Northern Judicial District of Oklahoma:

The Easterly 50 feet of Lots 11 and 12, in Block 23, in the City of Vinita, Oklahoma, according to the United States Government Survey thereof.

The Court further finds that on May 2, 1979, Carolyn S. Humphrey executed and delivered to the United States of America, acting through the Farmers Home Administration, her promissory note in the amount of \$20,000.00, payable in monthly installments, with interest thereon at the rate of 9 percent per annum.

The Court further finds that as security for the payment of the above described note, Carolyn S. Humphrey executed and delivered to the United States of America, acting through the Farmers Home Administration, a real estate mortgage dated May 2, 1979, and recorded on May 3, 1979, in Book 309, Page 457, in the records of Craig County, Oklahoma, covering the above described real property.

The Court further finds that the Defendant, Carolyn S. Humphrey, made default under the terms of the aforesaid promissory note and mortgage, by reason of her failure to make monthly installments due thereon, which default has continued and that by reason thereof the Defendant, Carolyn S. Humphrey, is indebted to the Plaintiff in the principal sum of \$19,131.49, plus accrued interest of \$3,171.40 as of December 26, 1985, plus interest thereafter at the rate of \$4.7174 per day until judgment, plus interest thereafter at the legal rate until fully paid, and the costs of this action accrued and accruing.

The Court further finds that the Defendants, County Treasurer, Craig County, Oklahoma, and Board of County Commissioners, Craig County, Oklahoma, have a lien on the property which is the subject matter of this action by virtue of certain ad valorem taxes due and owing to Craig County in the amount of \$ 72.02 . Said lien is superior to the interest of the Plaintiff, United States of America.

The Court further finds that the Defendant, Mid America Construction and Supply Company does not claim and does not have any right, title, or interest in the real property involved in this action.

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that the Defendant, County Treasurer, Craig County, Oklahoma, and Board of County Commissioners, Craig County, Oklahoma, recover judgment in the amount of \$ 72.02 plus applicable penalties and the costs of this action.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the Defendant, Mid America Construction and Supply Company, has no right, title, or interest in the real property which is the subject of this foreclosure action.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the Plaintiff have and recover judgment against Defendants, Carolyn S. Humphrey, in the principal amount of \$19,131.49, plus accrued interest of \$3,171.40 as of December 26, 1985, plus interest thereafter at the rate of \$4.7174 per day until judgment, plus interest thereafter at the legal rate until fully

paid, plus the costs of this action accrued and accruing, plus any additional sums advanced or to be advanced or expended during this foreclosure action by Plaintiff for taxes, insurance, abstracting, or sums for the preservation of the subject property.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that upon the failure of said Defendant to satisfy any money judgment of the Plaintiff herein, an Order of Sale shall be issued to the United States Marshal for the Northern District of Oklahoma, commanding him to advertise and sell with appraisement the real property involved herein and apply the proceeds of the sale as follows:

First:

In payment of the costs of this action accrued and accruing incurred by the Plaintiff, including costs of the sale of said real property;

Second:

In payment to the Defendant, County Treasurer, Craig County, Oklahoma, and Board of Commissioners, Craig County, Oklahoma, in the amount of \$ 72.02, ad valorem taxes which are presently due and owing on said real property;

Third:

In payment of the judgment rendered herein in favor of the Plaintiff;

The surplus from said sale, if any, shall be deposited with the Clerk of the Court to await further Order of the Court.


IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that from and after the sale of the above described real property, under and by virtue of this judgment and decree, the Defendants and all persons claiming under them since the filing of the Complaint, be and they are forever barred and foreclosed of any right, title, interest or claim in or to the subject real property or any part thereof.

S/ THOMAS R. BREIT

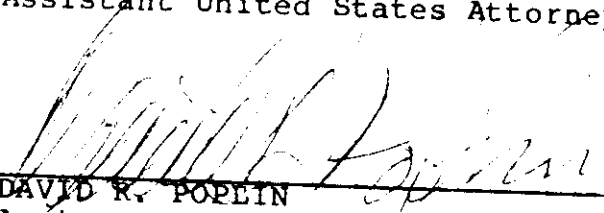
~~UNITED STATES DISTRICT JUDGE~~

APPROVED:

LAYN R. PHILLIPS
United States Attorney



PHIL PINNELL
Assistant United States Attorney



DAVID R. POPEIN
Assistant District Attorney
Attorney for Defendants,
County Treasurer and
Board of County Commissioners,
Craig County, Oklahoma

Internal

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

F I L E D

MAR 14 1986

Jack G. Silver, Clerk
U. S. DISTRICT COURT

CHESTER PHILLIPS; WANDA
PHILLIPS; DEANNA PHILLIPS,
by and through her father
and next friend, CHESTER
PHILLIPS; DUANE PHILLIPS;
JANET PHILLIPS,

Plaintiffs,

-vs-

BOARD OF COUNTY COMMISSIONERS
OF CREEK COUNTY, OKLAHOMA,
BOB WHITWORTH, Sheriff of
Creek County, Oklahoma, both
individually and in his
official capacity, JERRY
SILER, Under Sheriff of Creek
County, Oklahoma, individual-
ly and in his official capa-
city,

Defendants.) Case No. 84-C-865-B

ORDER DISMISSING CASE
WITH PREJUDICE

NOW on this 14th day of ^{March}~~February~~, 1986, the joint
Motion of plaintiffs & defendants in captioned case for
dismissal with prejudice comes on for hearing and it
appearing the terms and conditions of the compromise and
settlement of the foregoing case have been paid in full
by defendant Board of County Commissioners and that the
foregoing case should be and is by the Court dismissed
with prejudice to any future proceedings and remaining

court costs including depositions should be paid by the parties incurring the same.

S/ THOMAS R. BRETT

Thomas R. Brett
U.S. District Judge

APPROX. 25 TO FORM.
L. J. Miller
ATTORNEY FOR PLAINTIFFS
D. J. Miller
District

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

MAR 14 1986

JAMES C. SHERIDAN, CLERK
U.S. DISTRICT COURT

WILLIAM CHRIS BOHANNON, a minor,)
by his next friend, MICKEY)
BOHANNON,)

Plaintiff,)

vs.)

No. 85-C-⁹⁹³~~933~~-C

JAMES F. HUBBARD, BANETHA)
BUCHANAN, CATHY WOODRELL, KIM)
HEFLEY, JOHN FOLKS, RALPH)
TEAGUE, LLOYD GRAHAM, and)
JENNINGS INDEPENDENT SCHOOL)
SYSTEM,)

Defendants.)

O R D E R

Now before the Court for its consideration is the motion of defendant Ralph Teague for dismissal, pursuant to Rule 12(b)(6) F.R.Cv.P. or, in the alternative, for summary judgment, pursuant to Rule 56 F.R.Cv.P. As the Court finds that the plaintiff has failed to state a claim against defendant Teague, the motion shall be ruled upon under Rule 12(b)(6) F.R.Cv.P.

This action was brought pursuant to 42 U.S.C. §1983 and §1985(3). The complaint alleges that the nine-year-old plaintiff, a student at Jennings Elementary School, was ordered by two teachers to sit in a cardboard enclosure with a single opening facing the blackboard, during schoolroom hours from February, 1985 to May, 1985. The complaint alleges that such action violated certain constitutional rights of the plaintiff. Defendant Teague was at all relevant times County Superintendent of

Schools for Pawnee County, in which the Jennings Elementary Schools is located.

Defendant Teague moves for dismissal on the ground that one in a supervisory position is not liable under the facts of the case at bar. The appropriate standard was stated in McClelland v. Facticeau, 610 F.2d 693 (10th Cir. 1979):

This Court has held that [respondeat superior] cannot be used to hold liable under section 1983 superior officers who have no affirmative link with the misconduct. Id. at 695.

The Court continued:

We agree with those courts that have found a cause of action under section 1983 when the defendant was in a position of responsibility, knew or should have known of the misconduct, and yet failed to act to prevent future harm. Id. at 697.

The Complaint has stated no circumstances indicating that the application of respondeat superior is appropriate. The McClelland court stated that a superior may be sued under a theory of direct liability under the following standard:


Under direct liability, plaintiff must show the supervisor breached a duty to plaintiff which was the proximate cause of the injury. Id. at 695.

The plaintiff has purported to quote 70 O.S. §4-104(3) that "a county superintendent is charged with a duty to supervise the 'methods of instruction' utilized by teachers employed in his district." This language does not appear in the statute, which rather states that the superintendent or his deputies shall on occasion visit the schools under his supervision and "advise with

the teachers" regarding methods of instruction. Even under the tenuous assumption that the alleged action by the teachers in the case at bar could be characterized as a "method of instruction," the Court sees no breach of duty by defendant Teague nor any proximate causation resulting therefrom.

Accordingly, it is the Order of the Court that the motion for dismissal of defendant Ralph Teague should be and hereby is granted.

IT IS SO ORDERED this 14th day of March, 1986.



H. DALE COOK
Chief Judge, U. S. District Court

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

MAR 14 1985

STRATA-QUEST, a joint venture)
composed of STRATA OIL, a general)
partnership and QUEST PETROLEUM,)
LTD., a corporation,)

Plaintiff,)

vs.)

CLYDE JACOBS d/b/a/ JACOBS)
SUPPLY COMPANY; HAWKEYE PIPE)
SERVICES, INC., a corporation,)
and unknown Manufacturer,)

Defendants.)

JAMES S. JENSEN, CLERK
U.S. DISTRICT COURT

No. 84-C-691-C

O R D E R

Now before the Court for its consideration is the motion for partial summary judgment by plaintiff on the issue of whether defendant Hawkeye Pipe Service, Inc., ("Hawkeye") created an express warranty. In response, Hawkeye has admitted the creation of the express warranty, but has asserted that the plaintiff may not maintain its action on this ground for the reason that vertical privity is required as a prerequisite to suit on an express warranty.

This action was brought regarding allegedly defective oil well casing supplied to plaintiff by defendant Clyde Jacobs Supply after certain preparation by Hawkeye. As an exhibit to its motion, the plaintiff has attached a letter dated April 22, 1984, from the president of Hawkeye to defendant Clyde Jacobs Supply which contains the following statement: "Because of our confidence in the material we guarantee that the finished product

will perform to A.P.I. specifications if handled and used in a proper fashion." The parties do not dispute that this statement constitutes an express warranty; however, Hawkeye responds that plaintiff lacks the vertical privity with Hawkeye necessary to maintain suit on this ground.

In Elden v. Simmons, 631 P.2d 739 (Okla. 1981), the Oklahoma Supreme Court made the following statement:

In reaching our holdings today, we note that the requirement of vertical privity as a prerequisite to suit on an implied or express warranty, both under the Uniform Commercial Code and outside the Code, is, given today's market structure, an antiquated notion. Id. at 742 (emphasis added).


In Patty Precision v. Brown & Sharpe Mfg. Co., 742 F.2d 1260 (10th Cir. 1984), the United States Court of Appeals for the Tenth Circuit, after quoting the above passage in its full context, stated:

The Oklahoma Supreme Court unequivocally states in Elden that the rationale underlying [Old Albany Estates v. Highland Carpet Mills, 604 P.2d 849 (Okla. 1979)] applies to both express and implied warranties. The court's statement, though dictum, comports with the interpretation of Old Albany advanced by plaintiff. The statement is not in conflict with Old Albany or subsequent Oklahoma law and is considered persuasive in determining the law of Oklahoma. Thus, we hold that the trial court abused its discretion in denying plaintiff's motion for leave to amend its complaint on the basis that Oklahoma law requires vertical privity to recover economic damages resulting from a breach of express warranties. Id. at 1263 (citations omitted).

Accordingly, it is the Order of the Court that the plaintiff's motion for partial summary judgment is granted to the extent that the Court determines that an express warranty was

created by Hawkeye and that the plaintiff may maintain a cause of action thereon. This Order shall not be construed as any determination as to the issues of breach of warranty or liability.

IT IS SO ORDERED this 17th day of March, 1986.


H. DALE COOK
Chief Judge, U. S. District Court

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

BETTY ABSHIRE,
Plaintiff,

Vs.

MICHAEL W. PENNY, FRED E.
WYANT, and COY JOHNSON,
Individuals, d/b/a HOLIDAY
INNS OF ADA,
Defendants.

NO. 85-C-184-C

FILED

MAR 18 1986

Jack C. Silver, Clerk
U. S. DISTRICT COURT

ORDER

Now on this 13 day of March, 1986, for good cause
shown, upon the application of the parties to dismiss with
prejudice, same is granted.

IT IS SO ORDERED.

UNITED STATES DISTRICT JUDGE

United States District Court

FOR THE
EASTERN DISTRICT OF ARKANSAS

CIVIL ACTION FILE NO. H-C-82-83

UNITED STATES OF AMERICA

vs.

FILED

MAR 13 1986

JUDGMENT

CHARLES O. PEARSON

Jack C. Silver, Clerk
U.S. DISTRICT COURT**CERTIFICATION OF JUDGMENT FOR
REGISTRATION IN ANOTHER DISTRICT**

I, CARL R. BRENTS, Clerk of the United States District Court for
the EASTERN District of ARKANSAS,

do hereby certify the annexed to be a true and correct copy of the original judgment entered in the
above entitled action on SEPTEMBER 13, 1982, as it appears of record in my office,
and that

* NO NOTICE OF APPEAL FROM THE SAID JUDGMENT HAS BEEN FILED IN MY
OFFICE AND THE TIME FOR APPEAL COMMENCED TO RUN UPON THE ENTRY OF
THE JUDGMENT

IN TESTIMONY WHEREOF, I hereunto subscribe my name and affix the seal of the said
Court this 13th day of JUNE, 1984.

CARL R. BRENTS

, Clerk

By Richard M. Lee

Deputy Clerk

* When no notice of appeal from the judgment has been filed, insert "no notice of appeal from the said judgment has been filed in my office and the time for appeal commenced to run on [insert date] upon the entry of [If no motion of the character described in Rule 73(a) F.R.C.P. was filed, here insert 'the judgment', otherwise describe the nature of the order from the entry of which time for appeal is computed under that rule.] If an appeal was taken, insert "a notice of appeal from the said judgment was filed in my office on [insert date] and the judgment was affirmed by mandate of the Court of Appeals issued [insert date]" or "a notice of appeal from the said judgment was filed in my office on [insert date] and the appeal was dismissed by the [insert 'Court of Appeals' or 'District Court'] on [insert date]", as the case may be.

IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF ARKANSAS
EASTERN DIVISION

FILED

U.S. DISTRICT COURT
EASTERN DISTRICT OF ARKANSAS

SEP 14 1982

CARL R. BRENTS, CLERK

PLAINTIFF

UNITED STATES OF AMERICA

v.

H-C-82-83

CHARLES O. PEARSON

DEFENDANT

DEFAULT JUDGMENT

Plaintiff having requested entry of default judgment under Rule 55 of the Federal Rules of Civil Procedure, and upon affidavit of plaintiff that defendant is not an infant, incompetent person, nor in the military service, and defendant being in default by reason of complaint and summons having been served on him on

AUGUST 7th, 1982, and no answer or other responsive pleading having been filed,

JUDGMENT is entered herein in favor of the plaintiff and against the defendant in the amount of FIVE HUNDRED NINETY DOLLARS (\$590.00), plus accrued interest as of June 30, 1982, in the amount of \$56.80 for a total of \$646.80

together with costs incurred in this action in the sum of

with interest to accrue at the rate of 7% per annum from date of judgment.

Dated this 13th day of September 1982

CARL R. BRENTS, Clerk

By: *Joy Hogue*
Joy Hogue
Deputy Clerk

A TRUE COPY I CERTIFY
CARL R. BRENTS, CLERK

By: *Richard M. Hogue*
Richard M. Hogue
Deputy Clerk

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

FILED

MAR 13 1986

DEAN C. HUNTER, CLERK
U.S. DISTRICT COURT

UNITED STATES OF AMERICA,
Plaintiff,

vs.

PAWNEE LIVESTOCK SALES, INC.,
and NEWKIRK SALES BARN,
Defendants.

CIVIL ACTION NO. 86-C-35-C

NOTICE OF DISMISSAL

COMES NOW the Plaintiff, United States of America, by Layn R. Phillips, United States Attorney for the Northern District of Oklahoma, through Nancy Nesbitt Blevins, Assistant United States Attorney, and hereby dismisses its Complaint against the Defendant, Newkirk Sales Barn, Pursuant to Rule 41 of the Federal Rules of Civil Procedure.

UNITED STATES OF AMERICA

LAYN R. PHILLIPS
United States Attorney

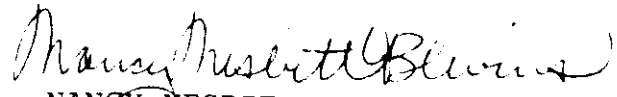
Nancy Nesbitt Blevins
NANCY NESBITT BLEVINS
Assistant United States Attorney
3600 U.S. Courthouse
Tulsa, Oklahoma 74103
(918) 581-7463

CERTIFICATE OF SERVICE

This is to certify that on the 13th day of March, 1986, a true and correct copy of the foregoing was mailed, postage prepaid thereon, to:

Mr. J. W. Olsen
Newkirk Sales Barn
P.O. Box 446
Newkirk, Oklahoma 74647

Mr. C. D. Northcutt, Esq.
P.O. Drawer 1669
Ponca City, Oklahoma 74602


NANCY NESBITT BLEVINS
Assistant United States Attorney

Entered

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

MAR 13 1986

JACK D. SWEENEY, CLERK
U.S. DISTRICT COURT

CITY INSURANCE COMPANY, INC.,)
a New Hampshire corporation,)

Plaintiff,)

v.)

THE CITY OF TULSA, OKLAHOMA,)
a municipal corporation,)

Defendant.)

No. 85-C-490-B ✓

O R D E R

This matter comes before the Court on Plaintiff's Motion to Dismiss without prejudice, pursuant to F.R.Civ.P. 41.

For good cause shown, it is hereby ordered that Plaintiff's Motion to Dismiss be sustained without prejudice. Discovery which Defendant obtained from Plaintiff during the pendency of this action may, where relevant, be used in any future proceedings relating to the circumstances and events described in Plaintiff's Complaint filed herein, should Plaintiff re-file this lawsuit.

IT IS SO ORDERED, this 13 day of March, 1986.

Thomas R. Brett
THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

Entered

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

FILED

MAR 13 1986

CARLIS HART,

Plaintiff,

vs.

UNITED STATES OF AMERICA,

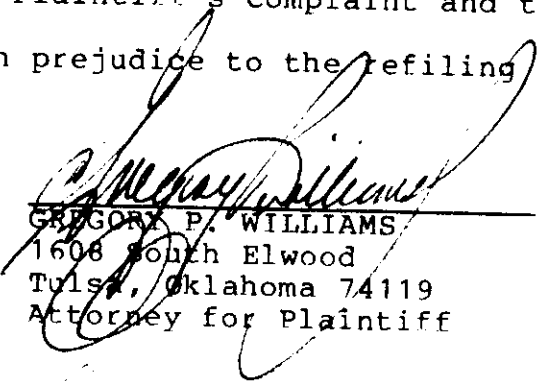
Defendant.

DOUGLAS OLIVER, CLERK
DISTRICT COURT

CIVIL ACTION NO. 85-C-405-B

STIPULATION OF
DISMISSAL WITH PREJUDICE


COME NOW the Plaintiff, Carlis Hart, by her attorney of record, Gregory P. Williams, and the Defendant, United States of America, acting on behalf of the Public Health Service, by Layn R. Phillips, United States Attorney for the Northern District of Oklahoma, through Peter Bernhardt, Assistant United States Attorney, and pursuant to Rule 41(a)(1) of the Federal Rules of Civil Procedure stipulate that Plaintiff's Complaint and this action should be dismissed with prejudice to the refiling of the same.



GREGORY P. WILLIAMS
1608 South Elwood
Tulsa, Oklahoma 74119
Attorney for Plaintiff



CARLIS HART



PETER BERNHARDT
Assistant U.S. Attorney
Attorney for United States
of America
3600 U.S. Courthouse
Tulsa, Oklahoma 74103

Entered

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

American Capital Corporation and
P. L. McNutt

Plaintiff(s),

vs.

Gulf American Resources, Inc.
George Reynolds and Ivan Funk;
The Estate of David D. Mathews

Defendant(s).

FILED

MAR 12 1986

Jack C. Silver, Clerk
U. S. DISTRICT COURT

No. 84-C-938-C

ADMINISTRATIVE CLOSING ORDER

The defendant, Estate of David D. Mathews, having settled and

The defendants*having filed its petition in bankruptcy and these proceedings being stayed thereby, it is hereby ordered that the Clerk administratively terminate this action in his records, without prejudice to the rights of the parties to reopen the proceedings for good cause shown for the entry of any stipulation or order, or for any other purpose required to obtain a final determination of the litigation.

IF, within 60 days of a final adjudication of the bankruptcy proceedings, the parties have not reopened for the purpose of obtaining a final determination herein, this action shall be deemed dismissed with prejudice.

IT IS SO ORDERED this 11 day of March, 19 86.

(*Defendants, Gulf American Resources, Inc., George Reynolds and Ivan Funk)

[Signature]
UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

E I L E D

UNITED STATES OF AMERICA,)
)
Plaintiff,)
)
vs.)
)
JANET L. GOLIGHTLY, a/k/a)
JANET L. ERSKINE,)
)
Defendant.)

MAR 12 1986

Jack C. Silver, Clerk
U. S. DISTRICT COURT

CIVIL ACTION NO. 86-C-61-E

DEFAULT JUDGMENT

This matter comes on for consideration this 11 day of March, 1986, the Plaintiff appearing by Layn R. Phillips, United States Attorney for the Northern District of Oklahoma, through Phil Pinnell, Assistant United States Attorney, and the Defendant, Janet L. Golightly, a/k/a Janet L. Erskine, appearing not.

The Court being fully advised and having examined the file herein finds that Defendant, Janet L. Golightly, a/k/a Janet L. Erskine, acknowledged receipt of Summons and Complaint on February 12, 1986. The time within which the Defendant could have answered or otherwise moved as to the Complaint has expired and has not been extended. The Defendant has not answered or otherwise moved, and default has been entered by the Clerk of this Court. Plaintiff is entitled to Judgment as a matter of law.

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that the Plaintiff have and recover judgment against the Defendant,

Janet L. Golightly, a/k/a Janet L. Erskine, for the principal sum of \$4,553.45, plus interest after judgment at the current legal rate of 7.71 percent per annum until paid, plus costs of this action.

S/ JAMES O. ELISON

~~UNITED STATES DISTRICT JUDGE~~

Entered

FILED

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

MAR 12 1986

144 C. Silver Clerk
DISTRICT COURT

LEO LAWRENCE,
Petitioner,
v.
UNITED STATES OF AMERICA,
Respondents.

Case No. 84-C-889-B ✓
69-CR-34


ORDER

The Court has for consideration the Findings and Recommendations of the Magistrate filed on February 19, 1986 in which the Magistrate recommends that the Motion to Vacate Sentence be denied. No exceptions or objections have been filed and the time for filing such exceptions or objections has expired.

After careful consideration of the record and the issues presented, the Court has concluded that the Findings and Recommendations of the Magistrate should be and hereby are affirmed and adopted as the Findings and Conclusions of this Court.

It is therefore Ordered that the Motion to Vacate Sentence is hereby denied.

It is so Ordered this 12th day of March,
1986.


THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

ORIGINAL

Entered

MAR 12 1988

Jack C. Silver, Clerk
DISTRICT COURT

LEO LAWRENCE,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

No. 84-C-889-HBS
69-CR-34

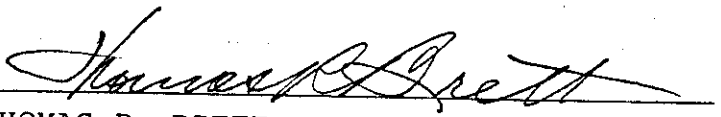
ORDER

This matter comes before the Court on Petitioner's Motion pursuant to 28 U.S.C. §2255 to vacate sentence rendered against him in the United States District Court for the Northern District of Oklahoma in Case No. 69-CR-34. United States Magistrate John Leo Wagner filed his Findings and Recommendations on February 19, 1986. Petitioner has filed no objections thereto. The Court hereby adopts the Magistrate's Findings and Recommendations and, therefore, denies the Motion to Vacate Sentence.

Petitioner bases his Motion on three grounds: 1) That he was not made aware of the true nature of the charges against him; 2) That no petition to enter a guilty plea or order entering plea was made by petitioner; 3) That his guilty plea was involuntary in that he did not understand the consequences of his plea. With respect to petitioner's third grounds for relief, the Court notes that no transcript of Lawrence's plea entered on May 6, 1969, is available. Petitioner, in his Motion, states that "The records of the case at bar reflect that said sentencing court fail (sic) to properly advise petitioner of his federal rights." The Court notes that no transcript is available of Lawrence's plea because

under policies and procedures of the Administrative Office of the U.S. Courts, records of such hearings are disposed of when ten years old. Guide to Judiciary Policies and Procedures of the Administrative Office of the United States Courts, Transmittal 89, Vol. I, Chap. IV, Part A, November 17, 1982, p. 38. On the basis of the record of proceedings on the Modification of petitioner's Sentence, held May 16, 1969, and other documents pertaining to this case, the Court agrees with and adopts the Findings and Recommendations of the Magistrate. Petitioner's Motion to Vacate Sentence is, therefore, denied.

IT IS SO ORDERED, this 12th day of March, 1986.


THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

Entered

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

CENTURY EQUIPMENT LEASING
CORPORATION,

Plaintiff,

v.

AMERICAN NATIONAL BANK &
TRUST COMPANY,

Defendant.

No. 85-C-815-B

FILED

MAR 12 1986

**Jack C. Silver, Clerk
U. S. DISTRICT COURT**

O R D E R

This matter comes before the Court on Defendant's Motion to Dismiss for lack of subject matter jurisdiction. Defendant contends the amount in controversy herein does not exceed the statutorily required \$10,000 limit. 28 U.S.C. §1332. For the reasons set forth below, the Motion to Dismiss is sustained.

This is a replevin action. The matter was brought before this court under 28 U.S.C. §1332. Plaintiff contends that the parties herein are citizens of different states and that the amount in controversy exceeds \$10,000. The background of this matter is this: In March 1983, plaintiff leased a lathe to Ronald Boren d/b/a The Parts Store. The lease was renewed in January 1984 for a term of 48 months at a rent of \$252 a month. On April 16, 1985, Boren declared bankruptcy. Thereafter, defendant herein claimed a security interest in the lathe and on August 1, 1985, defendant took possession of the lathe. Plaintiff seeks return of the lathe and reimbursement for lost income from rent of the equipment. The parties agree that the value of the lathe for purposes of this action is \$5,200. The question to be resolved is the amount of lost income to plaintiff from lost rent.

Plaintiff contends that it was entitled to possession of the lathe as of April 16, 1985, and that had it secured possession on that date it could have rented the lathe to another party for at least the term of the Boren lease at the same rental fee. Thus, plaintiff contends that 27 rental payments were due from Boren as of April 16, 1985, and that the lost income from these payments is \$7,144.20. These rental payments would have extended into 1987.

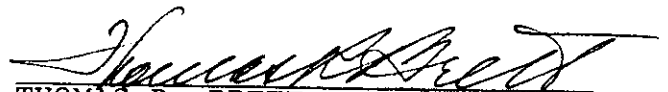
Defendant contends that the most plaintiff's lost income can total is \$2,268 - \$252 rent a month from April 1985 through November 1985. Under the defendant's calculation, the amount in controversy herein is a maximum of some \$7,468, well under the requisite \$10,000 limit.

In a diversity action, the amount in controversy is determined by applicable state law. Horton v. Liberty Mutual Ins. Co., 367 U.S. 348, 352-353 (1961). Under Oklahoma law, in a replevin action, damages may include the value of the property at issue and damages for its detention. 12 Okl.At. Ann. §1580. Thus, plaintiff may recover the \$5,200 value of the lathe and damages for its detention, including lost income. See, Joy v. Giglio, 208 Okl. 50, 254 P.2d 351 (1953). The amount in controversy is determined as of the time an action is commenced in federal court. 14A Wright and Miller, Federal Practice and Procedure, §3702 (1985); Sellers v. O'Connell, 701 F.2d 575 (6th Cir. 1983). Further, in an action for wrongful detention of property, the amount in controversy is limited to accrued rentals. Wright and Miller, supra; Rubel-Jones Agency, Inc. v. Jones, 165 F.Supp. 652 (W.D.Mo. 1958); Clay Center v. Farmers Loan & Trust Co., 145 U.S. 224, 225 (1892).

In this case, the amount of lost income is calculated as of

August 23, 1985, the date plaintiff commenced this action in federal court. Assuming, arguendo, that plaintiff was entitled to possession of its lathe as of April 16, 1985, the income lost from rentals accrued as of the date this lawsuit was initiated could be no more than \$1,260 (\$252/month for the period April through August 1985). Plaintiff's contention that it may include in its lost income rents due for 1986 and part of 1987 is without merit since only accrued rentals may be considered in establishing the jurisdictional amount. Clay Center, supra. Therefore, it appears to a legal certainty that less than the required amount is at issue. Bridgess v. Youree, 436 F.Supp. 458 (W.D.Okla. 1977). For this reason, the Motion to Dismiss must be sustained.

IT IS SO ORDERED, this 12th day of Mar, 1986.


THOMAS R. BRETT

UNITED STATES DISTRICT JUDGE

Entered

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

MINOLTA CORPORATION,
Plaintiff,

vs.

STANDARD OFFICE SUPPLY OF
TULSA, INC., et al,
Defendants

Case No. 85-C-478-BT

FILED

MAR 12 1986

Jack C. Silver, Clerk
U. S. DISTRICT COURT

ADMINISTRATIVE CLOSING ORDER

Standard Office Supply of Tulsa, Inc.

The Defendant/having filed its petition in bankruptcy and these proceeding being stayed thereby, it is hereby ordered that the Clerk administratively terminate this action in his records, without prejudice to the rights of the parties to reopen the proceedings for good cause shown for the entry of any stipulation or order, or for any other prupose required to obtain a final determination of the litigation.

IF, within 60 days of a final adjudication of the bankruptcy proceedings, the parties have not reopened for the purpose of obtaining a final determination herein, this action shall be deemed dismissed with prejudice.

IT IS SO ORDERED this 12 day of MARCH, 19 86.


UNITED STATES DISTRICT JUDGE
THOMAS R. BRETT

Entered

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

WILLIAM C. LANGDON,

Plaintiff,

vs.

SMITH BARNEY, HARRIS UPHAM & CO.,
INCORPORATED, MORTON L. ANNIS,
and ALBERT ROBERTS, III,

Defendants.

Case No. 85-C-115-B ✓

FILED

MAR 12 1986

ORDER

JACK C. SILVER, CLERK
U. S. DISTRICT COURT

For good cause shown, the Advise of Settlement/Dismissal with Prejudice filed herein by the Plaintiff on March 10, 1986, dismissing the instant action with prejudice to further filing is hereby accepted and approved; and it is therefore,

ORDERED that the above styled and numbered action be and it is dismissed with prejudice to further filing.

DATED: March 12, 1986


JUDGE OF THE DISTRICT COURT

Submitted by:

Donald E. Herrold, OBA #4140
Laurence A. Yeagley, OBA #9947
HERROLD, GREGG & HERROLD, INC.
1719 East 71st Street
Tulsa, Oklahoma 74136
(918) 494-4050
ATTORNEYS FOR PLAINTIFF

3-12-86
copy to phone
counsel, Pat Hurst Warren Bickford
+ they advised they have no
objections to dismissal
H. Overton

25

Entered

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

CONSTRUCTION DEVELOPMENT AND)
REALTY CORPORATION, an Okla-)
homa corporation; TRIPLETT)
ENTERPRISES INCORPORATED, an)
Oklahoma corporation; and,)
ROBERT L. TRIPLETT, JR.,)

Plaintiffs,)

vs.)

FLOYD W. COOK; PIPER AIRCRAFT)
CORPORATION, a Florida corpor-)
ation; and, PIPER ACCEPTANCE)
CORPORATION, a Florida corpor-)
ation,)

Defendants.)

FILED

MAR 12 1986

**Jack C. Silver, Clerk
U. S. DISTRICT COURT**

No. 83-C-682-B

ORDER OF DISMISSAL

Upon the application of the plaintiffs and for
good cause shown, this action is dismissed with prejudice.

S/ THOMAS R. BREIT
UNITED STATES DISTRICT JUDGE

12-1-1901

Judge of the District Court

Entered

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

FILED

MAR 12 1986

Jack C. Silver, Clerk
U. S. DISTRICT COURT

BANK OF COMMERCE AND TRUST
COMPANY OF TULSA, an Oklahoma
Banking Corporation,

Plaintiff

v.

UNITED STATES OF AMERICA,

Defendant

CIVIL NO. 83-C-795-B

AGREED JUDGMENT

Pursuant to agreement between plaintiff, Albert F. Holder,
and defendant, United States of America, it is hereby

ORDERED, ADJUDGED, and DECREED that defendant, United
States of America, have and recover of plaintiff, Albert F.
Holder, the sum of \$58,939.94, together with lawful interest
thereon as provided in 26 U.S.C. Section 6672.

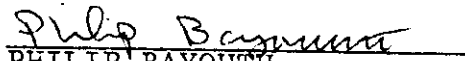
ENTERED this 12 day of March, 1986.

Thomas B. ...
UNITED STATES DISTRICT JUDGE

APPROVED:



ALBERT F. HOLDER
2912 Nelson
Mesquite, Texas 75149



PHILIP BAYOUTH
3227 E. 31st Street
Suite 202
Tulsa, Oklahoma 74105

COUNSEL FOR ALBERT HOLDER



MICHAEL M. GIBSON
Attorney, Tax Division
Department of Justice
Room 5B31, 1100 Commerce
Dallas, Texas 75242

ATTORNEY FOR UNITED STATES

Entered

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

FILED

MAR 12 1986

**JACK C. SIBER, CLERK
U. S. DISTRICT COURT**

UNITED STATES OF AMERICA,)
)
Plaintiff,)
)
vs.)
)
GARY M. BALDWIN,)
)
Defendant.)

CIVIL ACTION NO. 86-C-62-B

DEFAULT JUDGMENT

This matter comes on for consideration this 12th day of March, 1986, the Plaintiff appearing by Layn R. Phillips, United States Attorney for the Northern District of Oklahoma, through Phil Pinnell, Assistant United States Attorney, and the Defendant, Gary M. Baldwin, appearing not.

The Court being fully advised and having examined the file herein finds that Defendant, Gary M. Baldwin, acknowledged receipt of Summons and Complaint on February 7, 1986, 1986. The time within which the Defendant could have answered or otherwise moved as to the Complaint has expired and has not been extended. The Defendant has not answered or otherwise moved, and default has been entered by the Clerk of this Court. Plaintiff is entitled to Judgment as a matter of law.

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that the Plaintiff have and recover judgment against the Defendant,

Gary M. Baldwin, for the principal sum of \$695.40, plus interest at the rate of 12.25 percent per annum and administrative costs of \$.68 per month from June 15, 1984, plus interest thereafter at the current legal rate of 7.71 percent per annum until paid, plus costs of this action.

by THOMAS R. BRETT

UNITED STATES DISTRICT JUDGE

Entered

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

FILED

MAR 12 1986

**Jack C. Silver, Clerk
U. S. DISTRICT COURT**

UNITED STATES OF AMERICA,)
)
Plaintiff,)
)
vs.)
)
HAROLD E. KURTH,)
)
Defendant.)

CIVIL ACTION NO. 86-C-55-B

DEFAULT JUDGMENT

This matter comes on for consideration this 12th day of March, 1986, the Plaintiff appearing by Layn R. Phillips, United States Attorney for the Northern District of Oklahoma, through Phil Pinnell, Assistant United States Attorney, and the Defendant, Harold E. Kurth, appearing not.

The Court being fully advised and having examined the file herein finds that Defendant, Harold E. Kurth, acknowledged receipt of Summons and Complaint on February 7, 1986. The time within which the Defendant could have answered or otherwise moved as to the Complaint has expired and has not been extended. The Defendant has not answered or otherwise moved, and default has been entered by the Clerk of this Court. Plaintiff is entitled to Judgment as a matter of law.

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that the Plaintiff have and recover judgment against the Defendant,

Harold E. Kurth, for the principal sum of \$948.29, plus accrued interest of \$540.06 as of October 16, 1985, plus interest thereafter at the rate of 7 percent per annum until judgment, plus interest thereafter at the current legal rate of 7.71 percent per annum until paid, plus costs of this action.

S/ THOMAS D. BRETT

UNITED STATES DISTRICT JUDGE

Enclosed

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

FILED

MAR 12 1986

BANK OF COMMERCE AND TRUST
COMPANY OF TULSA, an Oklahoma
Banking Corporation,

Plaintiff

v.

UNITED STATES OF AMERICA,

Defendant

Jack C. Silver, Clerk
U. S. DISTRICT COURT

CIVIL NO. 83-C-795-B

AGREED JUDGMENT

Pursuant to agreement between plaintiff, Michael R. Frisbee, and defendant, United States of America, it is hereby ORDERED, ADJUDGED, and DECREED that defendant, United States of America, have and recover of plaintiff, Michael R. Frisbee, the sum of \$58,939.94, together with lawful interest thereon as provided in 26 U.S.C. Section 6672.

ENTERED this 12 day of March, 1986.

Thomas R. Bress
UNITED STATES DISTRICT JUDGE

5-3
63

APPROVED:



MICHAEL R. FRISBEE
P. O. Box 661
Catoosa, Oklahoma 74015



PHILIP BAYOUTH
3227 E. 31st Street
Suite 202
Tulsa, Oklahoma 74105

COUNSEL FOR MICHAEL R. FRISBEE



MICHAEL M. GIBSON
Attorney, Tax Division
Department of Justice
Room 5B31, 1100 Commerce
Dallas, Texas 75242

ATTORNEY FOR UNITED STATES

IN THE UNITED STATES DISTRICT COURT FOR
THE NORTHERN DISTRICT OF OKLAHOMA

BANK OF OKLAHOMA, TULSA, N. A.,

Plaintiff,

vs.

MARIO A. POSILLICO and J. D.
POSILLICO, INC., a New York
corporation,

Defendants.

No. 85-C-1144-C

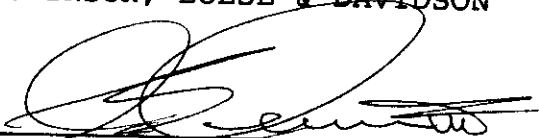
notice of
DISMISSAL

COMES NOW the Plaintiff herein and hereby dismisses the
above cause without prejudice.

Dated this 11th day of March, 1986.

ROBINSON, BOESE & DAVIDSON

By


C. S. Lewis, III - OBA 5402
P. O. Box 1046
Tulsa, Oklahoma 74101
(918) 583-1232
Attorneys for Plaintiff

Certificate of Service

I hereby certify that on the 11th day of March, 1986, a true
and correct copy of the above and foregoing document was mailed,
with full and sufficient postage affixed thereon, to: Clyde A.
Muchmore and Michael S. Laird, Crowe & Dunlevy, 1800 Mid-America
Tower, Oklahoma City, Oklahoma, 73102-8273.


C. S. Lewis, III

IN THE UNITED STATES DISTRICT COURT FOR
THE NORTHERN DISTRICT OF OKLAHOMA

BANK OF OKLAHOMA, TULSA, N. A.,)

Plaintiff,)

vs.)

No. 86-C-36-C)

CENTURY CENTER, LTD., an Oklahoma)
limited partnership, MARIO A.)
POSILLICO, and J. D. POSILLICO,)
INC., a New York corporation,)

Defendants.)

notice of
D I S M I S S A L

COMES NOW the Plaintiff herein and hereby dismisses the
above cause without prejudice.

Dated this 11th day of March, 1986.

ROBINSON, BOESE & DAVIDSON

By 

C. S. Lewis, III - OBA 5402
P. O. Box 1046
Tulsa, Oklahoma 74101
(918) 583-1232
Attorneys for Plaintiff

Certificate of Service

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and correct copy of the above and foregoing document was mailed,
with full and sufficient postage affixed thereon, to: Clyde A.
Muchmore and Michael S. Laird, Crowe & Dunlevy, 1800 Mid-America
Tower, Oklahoma City, Oklahoma, 73102-8273.


C. S. Lewis, III

Entered

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

UNITED STATES OF AMERICA,)
)
Plaintiff,)
)
vs.)
)
ARLETTA SUE COUSATTE,)
SECURITY BANK AND TRUST)
COMPANY, Miami, Oklahoma,)
COUNTY TREASURER, Ottawa)
County, Oklahoma, and BOARD)
OF COUNTY COMMISSIONERS,)
Ottawa County, Oklahoma,)
)
Defendants.)

FILED

MAR 11 1986

Jack C. Silver, Clerk
U. S. DISTRICT COURT

CIVIL ACTION NO. 85-C-1086-B

NOTICE OF DISMISSAL

COMES NOW the United States of America by Layn R. Phillips, United States Attorney for the Northern District of Oklahoma, Plaintiff herein, through Phil Pinnell, Assistant United States Attorney, and hereby gives notice of its dismissal, pursuant to Rule 41, Federal Rules of Civil Procedure, of this action without prejudice.

Dated this 11th day of March, 1986.

UNITED STATES OF AMERICA

LAYN R. PHILLIPS
United States Attorney

PHIL PINNELL
Assistant United States Attorney
3600 U.S. Courthouse
Tulsa, Oklahoma 74103
(918) 581-7463

CERTIFICATE OF SERVICE

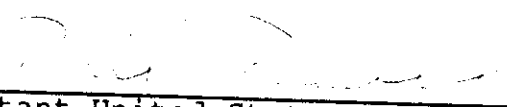
This is to certify that on the 11th day of March, 1986, a true and correct copy of the foregoing was mailed, postage prepaid thereon, to:

Arletta Sue Cousatte
Route 1
Quapaw, Oklahoma 74363

Security Bank and Trust Company
Vickie Keen, Cashier
P.O. Box 880
Miami, Oklahoma 74355

County Treasurer
Ottawa County, Oklahoma
Ottawa County Courthouse
Miami, Oklahoma 74354

Board of County Commissioners
Ottawa County, Oklahoma
Ottawa County Courthouse
Miami, Oklahoma 74354


Assistant United States Attorney

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

FILED

MAR 10 1986

RONALD DEAN MURRAY,

Petitioner,

v.

BILL YEAGER, Warden, Conner
Correctional Center

JACK C. SILVER, CLERK
U.S. DISTRICT COURT

No. 86-C-169-C

ORDER

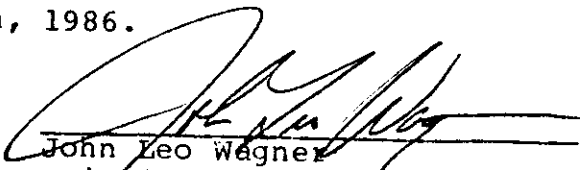
Comes now before the Magistrate Petitioner Ronald Dean Murray's Application for Writ of Habeas Corpus pursuant to 28 USC § 2254, together with his application to proceed in forma pauperis.

In reviewing the in forma pauperis application and supporting documentation the Magistrate notes that Plaintiff has in excess of \$400.00 in cash and securities on account at the penal institution where he is confined.

The instructions for filing § 2254 actions in this judicial district state that if a petitioner's prison account exceeds \$100.00 Petitioner must pay the filing fee as required by Rule 6(a) of the Local Rules for the Northern District of Oklahoma.

It is therefore Ordered that because Petitioner has more than \$100.00 on account, his application to proceed in forma pauperis be and is hereby denied.

Dated this 10th day of March, 1986.


John Leo Wagner
United States Magistrate

Entered

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

MAR 10 1986

JACK O. SMITH, CLERK
U.S. DISTRICT COURT

PAUL A. HANER,

Plaintiff,

vs.

No. 85-C-952-B ✓

CITY OF VINITA, OKLAHOMA,
a Municipal corporation,
GEORGE HICKS, JONI SWANNER,
MAYOR BOB WILES; and City
Counselmen RONNIE YOCHAM,
CLARENCE BRILEY, LEE
SIMMONS and JOE JOHNSON,

Defendants.

O R D E R

This matter comes before the Court on defendants' motion to dismiss, filed November 12, 1985. Plaintiff's response was due November 22, 1985. On January 3, 1986, plaintiff filed an application for extension of time to respond to the motion. The Court granted plaintiff's application, giving plaintiff until January 23, 1986, to respond to the motion. Plaintiff's counsel notified the Court Clerk's office on January 30, 1986 that a response would be forthcoming on January 31, 1986. No response has been filed. Defendants' motion to dismiss is hereby deemed confessed pursuant to Rule 14(a) of the United States District Court for the Northern District of Oklahoma. Defendants' motion to dismiss is granted.

IT IS SO ORDERED this 7th day of March, 1986.

Thomas R. Brett

THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

148

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

FILED
MAR 10 1986

MARK C. HENDERSON, CLERK
U.S. DISTRICT COURT

SAND SPRINGS HOME,)
)
Plaintiff,)
)
vs.) No. 86-C-85-B
)
INTERPLASTIC CORPORATION,)
et al.,)
)
Defendants.)

NOTICE OF DISMISSAL

TO:

INTERPLASTIC CORPORATION
and its attorney, Ivan M.
Levy, Esquire, Henretta,
Lamm & Cross, Suite 200,
10285 Yellow Circle Drive
Minneapolis, Minn., 55343

and

GENERAL ELECTRIC COMPANY
and its attorney, Herbert L.
Warren, Esquire, Legal
Counsel, General Electric
Company, Appliance Park
Building 2, Room 225,
Louisville, Ky., 40225


Notice is hereby given pursuant to Rule 41 (a) (1), F.R. Civ.
Proc., that whereas the defendants, Interplastic Corporation and
General Electric Company, have filed neither an answer nor a
motion for summary judgment herein,

NOW THEREFORE, plaintiff Sand Springs Home hereby dismisses
the above-entitled action as to said defendants Interplastic
Corporation and General Electric Company only, without prejudice
to re-filing, but the action is specifically not dismissed as to
any other defendant.

The Clerk is hereby requested to enter this Notice of Dismissal in the records of the Court.

DATED the 10 day of March, 1986.

DOERNER, STUART, SAUNDERS,
DANIEL & ANDERSON



William C. Anderson
James P. McCann
Angelyn L. Dale
1000 Atlas Life Building
Tulsa, OK 74103
(918) 582-1211
Attorneys for Plaintiff,
Sand Springs Home

CERTIFICATE OF MAILING

The undersigned hereby certifies that on the 10 day of March, 1986, a true and correct copy of the above and foregoing Notice of Dismissal was mailed, with proper postage prepaid thereon, to:

Kenny Joe Smith, Esquire
Chapel, Wilkenson, et al.
Frisco Building
502 W. 6th Street
Tulsa, Oklahoma 74119
Attorneys for Defendant Cessna Aircraft Company

Ronald N. Ricketts, Esquire
Gable & Gotwals
20th Floor,
Fourth National Bank Bldg.
Tulsa, Oklahoma 74119
Attorneys for Defendant Boeing Military Airplane Company

Richard Klinge, Esquire
Holloway, Dobson, Hudson & Bachman
101 Park Avenue, Suite 1100
Oklahoma City, Oklahoma 73102
Attorneys for Defendant Reid Supply Company, Inc.

William C. Anderson
William C. Anderson

Entered

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

McGILL INCORPORATED,
an Oklahoma corporation,

Plaintiff,

v.

HAROLD SCHECTMAN d/b/a NNRS;
SIPCO OIL (U.S.), INC., a
New York corporation; NNR&S,
INC., a New York corporation,

Defendants.

No. 85-C-1005-B

MAR -7 1986
JACK D. HENDERSON, CLERK
U.S. DISTRICT COURT

O R D E R

This matter comes before the Court on Plaintiff's Motion to Remand this matter to the District Court for Tulsa County, Oklahoma. For the reasons set forth below, the Motion to Remand is sustained.

A brief history of this lawsuit is in order. Plaintiff initiated this action in the District Court for Tulsa County, Oklahoma, on June 5, 1985. Named as defendants in Plaintiff's Complaint were: Harold Schectman d/b/a NNRS and SIPCO, Inc. On June 17, 1985, Schectman moved to dismiss the lawsuit for lack of jurisdiction. Schectman's Motion to Dismiss was overruled and on August 14, 1985, he filed an answer to the Complaint. Thus, Schectman did not seek to remove the matter to federal court within the 30-day period specified in 28 U.S.C. §1446(b). There is diversity of citizenship between plaintiff and the defendants.

On September 11, 1985, Plaintiff amended its Complaint, naming as defendants the following: Harold Schectman d/b/a NNRS; SIPCO Oil, Inc., and NNR&S, Inc. NNR&S, Inc. asserts that it did not receive a copy of the Amended Petition until October 21, 1985. Sipco Oil,


Inc., asserts that it did not receive a copy of the Amended Petition until October 28, 1985. Schectman asserts he has never received a copy of the Amended Petition. On November 7, 1985, NNR&S, Inc., filed a Petition for Removal in the United States District Court for the Northern District of Oklahoma, alleging the diversity of all parties and the jurisdictional amount. Defendants Schectman and Sipco Oil, Inc., joined this Petition for Removal on November 14, 1985. On November 19, 1985, Plaintiff filed its Motion for Remand.

Where there are multiple defendants to a lawsuit, the petition for removal must show that each of the defendants desires and is eligible for removal. 29 Fed. Proc., L.Ed. §69:69; Tri-Cities Newspapers, Inc. v. Tri-Cities Printing Pressmen and Assistants' Local 349, Etc., 427 F.2d 325 (5th Cir. 1970). If any of the defendants is ineligible for removal, such removal is improper for all defendants. 29 Fed. Proc., supra; Baldwin v. Perdue, Inc., 451 F.Supp. 373 (E.D.Va. 1978). Failure of the first served defendant in a multiple-defendant lawsuit to seek removal or effect timely removal will prevent subsequently served defendants from remanding. 29 Fed. Proc., supra; Transport Indem. Co. v. Financial Trust Co., 339 F.Supp. 405 (C.D.Cal. 1972). Here, removal is improper because defendant Schectman is ineligible for removal. Schectman received the original Petition in this lawsuit on or about June 5, 1985. Clearly, Schectman had received the Petition by June 17, 1985, because he moved to dismiss the lawsuit on that date. Since the lawsuit was removable on diversity grounds at that time, Schectman had 30 days in which to file a petition for removal. 28 U.S.C. §1446(b). His failure to do so meant he waived his right to remove. U.S. ex rel. Walker v.

Gunn, 511 F.2d 1024, 1027 (9th Cir.), cert. den., Walker v. California, 423 U.S. 849 (1975); Fugard v. Thierry, 265 F.Supp. 743, 745 (N.D. Ill. 1967). That waiver cannot be cured by consenting to a petition for removal filed by a subsequently served defendant. Friedrich v. Whittaker Corp., 467 F.Supp. 1012, 1014 (S.D.Tex. 1979).

Although the Amended Petition, filed September 11, 1985, but apparently not received by NNR&S, Inc., and Sipco Oil until more than a month later, started the 30-day removal time period running with respect to these defendants, it did not revive the removal period with respect to Schectman. The Amended Petition did not change the gist of the lawsuit. It did not so change the lawsuit so as to make it substantially a new suit. Fletcher v. Hamlet, 116 U.S. 408, 410 (1886). Therefore, Schectman having waived his right to remove, was ineligible to join the Petition for Removal filed by NNR&S on November 7, 1985. Therefore, all defendants could not join in the removal petition and removal as to any of them is improper. Baldwin v. Perdue, Inc., supra. For these reasons, the Plaintiff's Motion to Remand is sustained.

IT IS SO ORDERED, this 20th day of May, 1986.


THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

FILED

MAR 7 1986

Jack C. Silver, Clerk
U. S. DISTRICT COURT

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

C.I.T. FINANCIAL SERVICES
CORP.,

Plaintiff,

vs.

No. 84-C-1012-E

W. G. MORRIS DEVELOPMENT CO.,
INC., d/b/a MORRIS HOMES,
et al.,

Defendants.

FILED

MAR 7 1986

Jack C. Silver, Clerk
U. S. DISTRICT COURT


O R D E R

There being no response to the Motion for Summary Judgment of Plaintiff, C.I.T. Financial Services Corporation and more than ten (10) days having passed since the date such response was required to be filed, the Court, pursuant to Local Rule 14(a), as amended effective March 1, 1981, concludes that Defendants have therefore waived any objection or opposition to the Plaintiff's Motion for Summary Judgment. See Woods Constr. Co. v. Atlas Chemical Indus., Inc., 337 F.2d 888, 890 (10th Cir. 1964).

The Plaintiff's Motion for Summary Judgment is therefore granted.

The Plaintiff is given thirty (30) days to submit an Order of judgment to the Court for its approval.

DATED this 7th day of March, 1986.


JAMES O. ELLISON
UNITED STATES DISTRICT JUDGE

FILED

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

MAR 7 1986

ROGER BLAIR, as father and
legal guardian of Cathleen
Blair, a minor child,

Plaintiff,

vs.

INSURANCE COMPANY OF NORTH
AMERICA, a Pennsylvania
insurance corporation,

Defendant.

Jack C. Silver, Clerk
U. S. DISTRICT COURT


No. 85-C-483-E

JUDGMENT

This action came on for hearing before the Court, Honorable James O. Ellison, District Judge, presiding, and the issues having been duly heard and a decision having been duly rendered,

IT IS ORDERED AND ADJUDGED that the Plaintiff Roger Blair, as father and legal guardian of Cathleen Blair, recover judgment of the Defendant Insurance Company of North America, that the Defendant's right of subrogation pursuant to 36 O.S. §3636(E) be declared unenforceable against any funds received by the Plaintiff in case no. 84-C-788-E and that Plaintiff be awarded his costs of action.

DATED at Tulsa, Oklahoma this 6th day of March, 1986.


JAMES O. ELLISON
UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

FILED

MAR 7 1986

Jack C. Silver, Clerk
U. S. DISTRICT COURT

Jack R. Butz and
William Teel,

Plaintiffs,

vs.

No. 84-C-935-E

Lambert Importers & Exporters,
Inc., a Texas corporation and
Adrian Lambert, an individual,

Defendants.

JUDGMENT

NOW on this 7th day of March, 1986, the above styled case comes before this Court in its regularly scheduled order for trial. Upon a review of the files and records and the opportunity for all parties to be heard, this Court FINDS:

1. That based upon the Plaintiffs' Motion For Summary Judgment And Brief In Support Thereof, including Exhibits "A" and "B" to said Motion, plus the previous Order of this Court dated June 3, 1985 and filed June 4, 1985, the Plaintiffs are entitled to a summary judgment as a matter of law for Count I of their Complaint, as no dispute of any material facts exist.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that a Judgment in the principal sum of \$100,000.00 be granted in favor of the Plaintiffs and against all named Defendants, jointly and severally, plus contracted past due interest of \$33,575.05, plus attorneys fees of \$6,650.58, plus costs of \$456.70, for a total Judgment amount of \$140,682.33, the total Judgment to be subject to post judgment interest at the legal rate until fully paid and satisfied.

S/ JAMES O. ELLISON

JAMES O. ELLISON
UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

FILED

UNITED STATES OF AMERICA,)
)
Plaintiff,)
)
vs.)
)
LARRY E. KIRKLAND,)
)
Defendant.)

FEB 7 1986

Jack C. Silver, Clerk
U. S. DISTRICT COURT

CIVIL ACTION NO. 85-C-996-C^{766-E}

DEFAULT JUDGMENT

This matter comes on for consideration this 6th day of February, 1986, the Plaintiff appearing by Layn R. Phillips, United States Attorney for the Northern District of Oklahoma, through Peter Bernhardt, Assistant United States Attorney, and the Defendant, Larry E. Kirkland, appearing not.

The Court being fully advised and having examined the file herein finds that Defendant, Larry E. Kirkland, was served with Summons and Complaint on December 23, 1985. The time within which the Defendant could have answered or otherwise moved as to the Complaint has expired and has not been extended. The Defendant has not answered or otherwise moved, and default has been entered by the Clerk of this Court. Plaintiff is entitled to Judgment as a matter of law.

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that the Plaintiff have and recover judgment against the Defendant,

Larry E. Kirkland, for the principal sum of \$672.80, plus interest at the rate of 15.05 percent per annum and administrative costs of \$.61 per month from September 7, 1983, and \$.68 per month from January 1, 1984 until judgment, plus interest thereafter at the current legal rate of 7.21 percent per annum until paid, plus costs of this action.

S/ JAMES O. ELLISON

UNITED STATES DISTRICT JUDGE

FILED

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

MAR 6 1986

Jack C. Silver, Clerk
U. S. DISTRICT COURT

TOM SOURTER,

Plaintiff,

vs.

THE WILLIAMS COMPANIES,
a corporation,

Defendant.


No. 86-C-22-E

O R D E R

There being no response to the Defendant's motion to dismiss and more than ten (10) days having passed since the filing of the motion and no extension of time having been sought by Plaintiff, the Court, pursuant to Local Rule 14(a), as amended effective March 1, 1981, concludes that Plaintiff has therefore waived any objection or opposition to the motion. See Woods Constr. Co. v. Atlas Chemical Indus., Inc., 337 F.2d 888, 890 (10th Cir. 1964).

The Defendant's motion to dismiss is therefore granted.

DATED this 6TH day of March, 1986.


JAMES O. ELLISON
UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

FILED

1 3 6 1986

Jack C. Silver, Clerk
U. S. DISTRICT COURT

GARY BURCHART, an individual,
and REBECCA BURCHART, an
individual,

Plaintiffs,

vs.

NEWSPAPER PRINTING CORPORATION,
an Oklahoma corporation,

Defendant.

No. 85-C-1126

PLAINTIFFS' NOTICE OF DISMISSAL

The Plaintiffs, Gary Burchart and Rebecca Burchart, pursuant to the provisions of Rule 41(a)(1) of the Federal Rules of Civil Procedure, hereby voluntarily dismiss the captioned matter, without prejudice. In support of this Notice, Plaintiffs state that the Defendant, Newspaper Printing Corporation, has neither filed an Answer nor a Motion for Summary Judgment.

Respectfully submitted,

By:

Joel L. Wohlgemuth
John E. Dowdell
NORMAN, WOHLGEMUTH & THOMPSON
909 Kennedy Building
Tulsa, Oklahoma 74103
(918) 583-7571

Attorneys for Plaintiffs,
Gary Burchart and Rebecca
Burchart

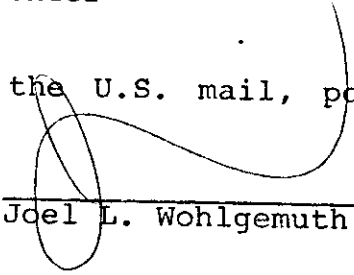
CERTIFICATE OF MAILING

I, Joel L. Wohlgemuth, hereby certify that on the 6th day of March, 1986, I mailed true and correct copies of the above and foregoing instrument to:

Reuben Davis, Esq.
BOONE, SMITH, DAVIS & HURST
500 Oneok Plaza
100 W. Fifth Street
Tulsa, OK 74103

Robert L. Ballow, Esq.
R. Eddie Wayland, Esq.
KING, BALLOW & LITTLE
2400 First American Center
Nashville, TN 37238

by depositing said copies in the U.S. mail, postage prepaid thereon.



Joel L. Wohlgemuth

FILED

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

MAR 6 1986

Jack C. Silver, Clerk
U. S. DISTRICT COURT

MARIE HAMRA,

Plaintiff,

vs.

No. 85-C-1114-E

PUBLIC SERVICE COMPANY
OF OKLAHOMA, an Oklahoma
corporation,

Defendant.

O R D E R

There being no response to the Defendant's motion to dismiss and more than ten (10) days having passed since the filing of the motion and no extension of time having been sought by Plaintiff, the Court, pursuant to Local Rule 14(a), as amended effective March 1, 1981, concludes that Plaintiff has therefore waived any objection or opposition to the motion. See Woods Constr. Co. v. Atlas Chemical Indus., Inc., 337 F.2d 888, 890 (10th Cir. 1964).

The Defendant's motion to dismiss is therefore granted.

DATED this 6th day of March, 1986.



JAMES O. ELLISON
UNITED STATES DISTRICT JUDGE

FILED

1986 6 1986

Jack C. Silver, Clerk

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA
NORTHERN DISTRICT OF OKLAHOMA

TIMMY L. HESS,

Plaintiff,

v.

MARGARET M. HECKLER, Secretary
of Health and Human Service,

Defendant.

No. 84-C-1002-E


ORDER

The Court has for consideration the Findings and Recommendations of the Magistrate filed on February , 1986, in which it is recommended that this case be remanded to the Secretary for further administrative proceedings. No exceptions or objections have been filed and the time for filing such exceptions or objections has expired.

After careful consideration of the matters presented to it, the Court has concluded that the Findings and Recommendations of the Magistrate should be and hereby are affirmed.

It is hereby Ordered that this case be remanded to the Secretary for further proceedings consonant with the Findings and Recommendations of the Magistrate.

Dated this 6th day of MARCH ~~February~~, 1986.


JAMES O. ELLISON
UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

FRANCES MOORE, JAMES COLLINS,
JR., and CAROL COLLINS,

Plaintiffs,

v.

SAMSON RESOURCES COMPANY,
a corporation,

Defendants.

No. 85-C-179-B ✓

FILED

MAR 5 1986

Jack C. Silver, Clerk
U. S. DISTRICT COURT


ORDER

The Court has for consideration the Findings and Recommendations of the Magistrate filed February 19, 1986 in which the Magistrate recommends that Plaintiffs' Application for Attorney's Fees be denied. No exceptions or objections have been filed and the time for filing such exceptions or objections has expired.

After careful consideration of the record and the issues, the Court has concluded that the Findings and Recommendations of the Magistrate should be and hereby are affirmed and adopted by the Court.

It is therefore Ordered that Plaintiffs' Application for Attorney's Fees be and is hereby denied.

It is so Ordered this 5 day of March, 1986.


THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

Entered

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

FILED

MAR -5 1986

JACK S. SMITH, CLERK
U.S. DISTRICT COURT

RONALD LEE SNYDER,
Plaintiff,

vs.

No. 83-C-467-B ✓

OKLAHOMA INDEPENDENT ENERGY
COMPANY, LTD., d/b/a OKIE
COMPANY, an Oklahoma
corporation, and THOMAS L.
BURGESS,

Defendants.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

The Court entered Judgment herein in favor of plaintiff, Ronald Lee Snyder, and against the defendants, jointly and severally, on April 9, 1984. The matter came on for hearing before the Court on plaintiff's application for attorney fees on February 7, 1985. The Court ordered plaintiff to prepare proposed findings of fact and conclusions of law by February 15, 1985, and later directed plaintiff by letter dated February 25, 1986, to file proposed findings and conclusions by February 28, 1986. The proposed findings and conclusions having been filed, the Court hereby enters the following findings of fact and conclusions of law:

Findings of Fact

1. The law firm of Howard, LaSorsa and Widdows utilized four persons in the preparation and trial of this action, for the times and hourly rates reflected below:

Gene C. Howard	28	hours	\$125.00/hour	\$ 784.00
P. Gae Widdows	74.5	hours	\$ 85.00/hour	\$6,333.00
Terry Weber	15	hours	\$ 75.00/hour	\$1,125.00
Interns	10	hours	\$ 30.00/hour	\$ 300.00

2. This matter was tried to a jury on March 19, 20, and 21, 1984. On March 21, 1984, the jury returned a verdict in favor of plaintiff, Ronald Lee Snyder, and against defendants, Oklahoma Independent Energy Co., Ltd., d/b/a Okie Company, and Thomas L. Burgess. The jury found against defendants on plaintiff's claims for violations of Section 10b of the Securities and Exchange Act of 1934 and Rule 10b-5 of the Securities and Exchange Commission, for violation of Section 408(a)(2) of the Oklahoma Securities Act, for violation of Oklahoma's statutory fraud statute, Title 15 O.S. §58, and for breach of contract.

3. Defendants appealed the judgment to the United States Court of Appeals for the Tenth Circuit. On March 1, 1985, the Tenth Circuit affirmed the judgment of this Court.

4. Carol L. Swenson, attorney of Tulsa, Oklahoma, testified on February 7, 1985, that the attorney fee request of \$8,542.00 was reasonable and fair under the standards for billing practiced in the community, due to the time involved in preparation of the matter for trial and the complexity of the matters involved.

5. Defendants failed to appear at the hearing set February 7, 1985, on plaintiffs' application for attorney fees. Plaintiff therefore defaulted on the application for attorney fees.

6. Plaintiff's total attorney fee request is \$8,542.00.

CONCLUSIONS OF LAW

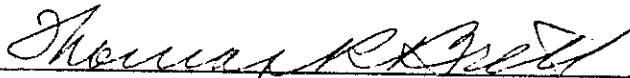
1. The number of hours rendered by plaintiff's attorneys is reasonable. The hourly rate submitted by plaintiff's attorneys is reasonable.

2. Attorney fees can be awarded in a private suit brought to enforce section 78j of Title 15, United States Code (Rule 10b of the 1934 Act). Kahan v. Rosenstiel, 424 F.2d 161 (3d Cir. 1970), cert. denied, 398 U.S. 950 (1970).

3. The Court concludes a reasonable attorney's fee herein is \$8,542.00.

IT IS THEREFORE ORDERED plaintiff is entitled to an attorney's fee in the amount of \$8,542.00. A Judgment in keeping with these Findings of Fact and Conclusions of Law shall be filed contemporaneously herein.

ENTERED this 5 day of March, 1986.



THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

Entered

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

MAR -5 1986

JACK C. SILVER, C
U.S. DISTRICT CO

RONALD LEE SNYDER,

Plaintiff,

v.

No. 83-C-467-B

OKLAHOMA INDEPENDENT ENERGY
COMPANY, LTD., d/b/a OKIE
COMPANY, an Oklahoma
corporation, and THOMAS L.
BURGESS,

Defendants.

J U D G M E N T

This action having come before the Court on the application of plaintiff, Ronald Lee Snyder, for attorney fees, and the Court having entered Findings of Fact and Conclusions of Law this date, IT IS HEREBY ORDERED AND ADJUDGED that the plaintiff, Ronald Lee Snyder, recover of the defendants, Oklahoma Independent Energy Company, Ltd., d/b/a Okie Company, an Oklahoma corporation, and Thomas L. Burgess, the sum of Eight Thousand Five Hundred Forty Two and No/100 Dollars (\$8,542.00) in attorney fees, post-judgment interest to run on said sum at the rate of 7.71%.

DATED this 5 day of March, 1986.

Thomas R. Brett

THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

OKLAHOMA BLACK OFFICERS, et al.,

Plaintiffs,

Civil Action No. 83-C-246-B ✓

vs.

FILED

CITY OF TULSA, et al.,

MAR 5 1986

Defendants.

Jack C. Silver, Clerk

U. S. DISTRICT COURT

ORDER FOR DISMISSAL WITH PREJUDICE OF ALL CLAIMS
OF PLAINTIFF ROY C. JOHNSON AGAINST ALL DEFENDANTS,
DISMISSING ALLEGATIONS OF THIRD AMENDED AND SUPPLEMENTAL
COMPLAINT WITH PREJUDICE AND DIRECTING ENTRY OF JUDGMENT

This matter having come on to be heard upon the filing of the attached Stipulation for Dismissal With Prejudice and Entry of Judgment As To All Claims of Plaintiff Roy C. Johnson Only Against All Defendants and the Court being otherwise advised in the premises, now, therefore:

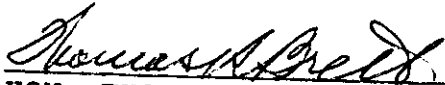
IT IS HEREBY ORDERED AND ADJUDGED that all claims and causes of action of Plaintiff ROY C. JOHNSON in the above-captioned matter against all Defendants be and the same are hereby DISMISSED WITH PREJUDICE.

IT IS FURTHER ORDERED AND ADJUDGED that Paragraphs 6, 47, 48, 49, 50, 51 and 52 of the Third Amended and Supplemental Complaint, which relate only to Plaintiff ROY C. JOHNSON, be and the same are hereby STRICKEN;


IT IS FURTHER ORDERED AND ADJUDGED that neither Plaintiff ROY C. JOHNSON or his counsel or any of the Defendants or their counsel will seek or recover their costs or attorney fees from the opposing parties;


IT IS FURTHER ORDERED AND ADJUDGED, pursuant to Rule 54(b) of the Federal Rules of Civil Procedure, that an express determination is hereby made by the Court that there is no just reason for delay and expressly directs entry of judgment of no cause for action in favor of all Defendants and against Plaintiff ROY C. JOHNSON, only.

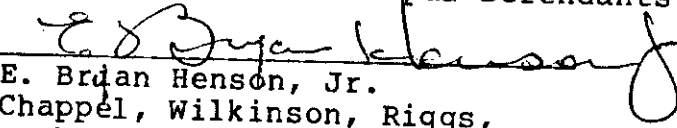
IT IS FURTHER ORDERED AND ADJUDGED that Plaintiff ROY C. JOHNSON be and is hereby DISMISSED AS A PARTY PLAINTIFF TO THIS ACTION.



HON. THOMAS R. BRETT
United States District Judge



Approved as to form & substance:


IMOGENE HARRIS
Assistant City Attorney
Counsel for Municipal Defendants


RILEY AND ROUMELL
By John F. Brady
Co-Counsel for Municipal Defendants


E. Brian Henson, Jr.
Chappel, Wilkinson, Riggs,
Abne & Henson
Attorneys for FOP Defendants


ALVIN HAYES, JR.
Attorney for Plaintiff Roy C. Johnson


Mike Kerpan, pro se

Fred D. Davis, pro se

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

F I L E D

JAMES ELLIS COX, Executor
of the Dorothy Louise Wilson
Estate,

Plaintiff,

vs.

HARTFORD CASUALTY INSURANCE
COMPANY, a corporation,

Defendant.

FEB 5 1986

Jack C. Silver, Clerk
U. S. DISTRICT COURT

NO. 84-C-775-E

JOURNAL ENTRY OF JUDGMENT

On the 13th day of February, 1986, there came on for hearing the Motion for Summary Judgment of the defendant, Hartford Casualty Insurance Company, a corporation, against the third party defendant, Bryan Patrick Watts. The defendant, Hartford Casualty Insurance Company, appeared by and through its attorney, James K. Secrest, II. The third party defendant, Bryan Patrick Watts, appeared by and through his attorney, Joseph Sharp.

The Court, after hearing argument of counsel, including the objection of the third party defendant to the Motion for Summary Judgment asserted by the defendant, Hartford Casualty Insurance Company, determined that said Motion should be sustained.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED by the Court that the Motion for Summary Judgment of the defendant, Hartford Casualty Insurance Company against the third party defendant, Bryan Patrick Watts, be and is hereby ordered sustained.

1997, 1998, 1999, 2000, 2001, 2002, 2003, 2004, 2005, 2006, 2007, 2008, 2009, 2010, 2011, 2012, 2013, 2014, 2015, 2016, 2017, 2018, 2019, 2020, 2021, 2022, 2023, 2024, 2025, 2026, 2027, 2028, 2029, 2030, 2031, 2032, 2033, 2034, 2035, 2036, 2037, 2038, 2039, 2040, 2041, 2042, 2043, 2044, 2045, 2046, 2047, 2048, 2049, 2050, 2051, 2052, 2053, 2054, 2055, 2056, 2057, 2058, 2059, 2060, 2061, 2062, 2063, 2064, 2065, 2066, 2067, 2068, 2069, 2070, 2071, 2072, 2073, 2074, 2075, 2076, 2077, 2078, 2079, 2080, 2081, 2082, 2083, 2084, 2085, 2086, 2087, 2088, 2089, 2090, 2091, 2092, 2093, 2094, 2095, 2096, 2097, 2098, 2099, 2100, 2101, 2102, 2103, 2104, 2105, 2106, 2107, 2108, 2109, 2110, 2111, 2112, 2113, 2114, 2115, 2116, 2117, 2118, 2119, 2120, 2121, 2122, 2123, 2124, 2125, 2126, 2127, 2128, 2129, 2130, 2131, 2132, 2133, 2134, 2135, 2136, 2137, 2138, 2139, 2140, 2141, 2142, 2143, 2144, 2145, 2146, 2147, 2148, 2149, 2150, 2151, 2152, 2153, 2154, 2155, 2156, 2157, 2158, 2159, 2160, 2161, 2162, 2163, 2164, 2165, 2166, 2167, 2168, 2169, 2170, 2171, 2172, 2173, 2174, 2175, 2176, 2177, 2178, 2179, 2180, 2181, 2182, 2183, 2184, 2185, 2186, 2187, 2188, 2189, 2190, 2191, 2192, 2193, 2194, 2195, 2196, 2197, 2198, 2199, 2200, 2201, 2202, 2203, 2204, 2205, 2206, 2207, 2208, 2209, 2210, 2211, 2212, 2213, 2214, 2215, 2216, 2217, 2218, 2219, 2220, 2221, 2222, 2223, 2224, 2225, 2226, 2227, 2228, 2229, 2230, 2231, 2232, 2233, 2234, 2235, 2236, 2237, 2238, 2239, 2240, 2241, 2242, 2243, 2244, 2245, 2246, 2247, 2248, 2249, 2250, 2251, 2252, 2253, 2254, 2255, 2256, 2257, 2258, 2259, 2260, 2261, 2262, 2263, 2264, 2265, 2266, 2267, 2268, 2269, 2270, 2271, 2272, 2273, 2274, 2275, 2276, 2277, 2278, 2279, 2280, 2281, 2282, 2283, 2284, 2285, 2286, 2287, 2288, 2289, 2290, 2291, 2292, 2293, 2294, 2295, 2296, 2297, 2298, 2299, 2300, 2301, 2302, 2303, 2304, 2305, 2306, 2307, 2308, 2309, 2310, 2311, 2312, 2313, 2314, 2315, 2316, 2317, 2318, 2319, 2320, 2321, 2322, 2323, 2324, 2325, 2326, 2327, 2328, 2329, 2330, 2331, 2332, 2333, 2334, 2335, 2336, 2337, 2338, 2339, 2340, 2341, 2342, 2343, 2344, 2345, 2346, 2347, 2348, 2349, 2350, 2351, 2352, 2353, 2354, 2355, 2356, 2357, 2358, 2359, 2360, 2361, 2362, 2363, 2364, 2365, 2366, 2367, 2368, 2369, 2370, 2371, 2372, 2373, 2374, 2375, 2376, 2377, 2378, 2379, 2380, 2381, 2382, 2383, 2384, 2385, 2386, 2387, 2388, 2389, 2390, 2391, 2392, 2393, 2394, 2395, 2396, 2397, 2398, 2399, 2400, 2401, 2402, 2403, 2404, 2405, 2406, 2407, 2408, 2409, 2410, 2411, 2412, 2413, 2414, 2415, 2416, 2417, 2418, 2419, 2420, 2421, 2422, 2423, 2424, 2425, 2426, 2427, 2428, 2429, 2430, 2431, 2432, 2433, 2434, 2435, 2436, 2437, 2438, 2439, 2440, 2441, 2442, 2443, 2444, 2445, 2446, 2447, 2448, 2449, 2450, 2451, 2452, 2453, 2454, 2455, 2456, 2457, 2458, 2459, 2460, 2461, 2462, 2463, 2464, 2465, 2466, 2467, 2468, 2469, 2470, 2471, 2472, 2473, 2474, 2475, 2476, 2477, 2478, 2479, 2480, 2481, 2482, 2483, 2484, 2485, 2486, 2487, 2488, 2489, 2490, 2491, 2492, 2493, 2494, 2495, 2496, 2497, 2498, 2499, 2500, 2501, 2502, 2503, 2504, 2505, 2506, 2507, 2508, 2509, 2510, 2511, 2512, 2513, 2514, 2515, 2516, 2517, 2518, 2519, 2520, 2521, 2522, 2523, 2524, 2525, 2526, 2527, 2528, 2529, 2530, 2531, 2532, 2533, 2534, 2535, 2536, 2537, 2538, 2539, 2540, 2541, 2542, 2543, 2544, 2545, 2546, 2547, 2548, 2549, 2550, 2551, 2552, 2553, 2554, 2555, 2556, 2557, 2558, 2559, 2560, 2561, 2562, 2563, 2564, 2565, 2566, 2567, 2568, 2569, 2570, 2571, 2572, 2573, 2574, 2575, 2576, 2577, 2578, 2579, 2580, 2581, 2582, 2583, 2584, 2585, 2586, 2587, 2588, 2589, 2590, 2591, 2592, 2593, 2594, 2595, 2596, 2597, 2598, 2599, 2600, 2601, 2602, 2603, 2604, 2605, 2606, 2607, 2608, 2609, 2610, 2611, 2612, 2613, 2614, 2615, 2616, 2617, 2618, 2619, 2620, 2621, 2622, 2623, 2624, 2625, 2626, 2627, 2628, 2629, 2630, 2631, 2632, 2633, 2634, 2635, 2636, 2637, 2638, 2639, 2640, 2641, 2642, 2643, 2644, 2645, 2646, 2647, 2648, 2649, 2650, 2651, 2652, 2653, 2654, 2655, 2656, 2657, 2658, 2659, 2660, 2661, 2662, 2663, 2664, 2665, 2666, 2667, 2668, 2669, 2670, 2671, 2672, 2673, 2674, 2675, 2676, 2677, 2678, 26

APPROVED AS TO FORM:

JAMES K. SECREST, II
Attorney for Defendant,
Hartford Casualty Insurance
Company

JOSEPH SHARP
Attorney for Third Party Defendant,
Bryan Patrick Watts

Entered

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

MAR -5 1986

THOMAS PATE

JACK C. SEYER, CLERK
U.S. DISTRICT COURT

Plaintiff(s),

vs.

No. 85-C-150-BT

NIAGARA MACHINE AND TOOL
WORKS, INC.

Defendant(s).

JUDGMENT DISMISSING ACTION
BY REASON OF SETTLEMENT

The Court has been advised by counsel that this action has been settled, or is in the process of being settled. Therefore, it is not necessary that the action remain upon the calendar of the Court.

IT IS ORDERED that the action is dismissed without prejudice. The Court retains complete jurisdiction to vacate this Order and to reopen the action upon cause shown that settlement has not been completed and further litigation is necessary.

IT IS FURTHER ORDERED that the Clerk forthwith serve copies of this Judgment by United States mail upon the attorneys for the parties appearing in this action.

Dated this 5th day of MARCH, 1986.

Thomas R. Brett
UNITED STATES DISTRICT JUDGE
THOMAS R. BRETT

Entered
IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

MAR -5 1986

HATTIE BURD

JACK C. SILVER, CLERK
U.S. DISTRICT COURT

Plaintiff(s),

vs.

No. 85-C-824-BT

MONTGOMERY WARD & CO.

Defendant(s).

JUDGMENT DISMISSING ACTION
BY REASON OF SETTLEMENT

The Court has been advised by counsel that this action has been settled, or is in the process of being settled. Therefore, it is not necessary that the action remain upon the calendar of the Court.

IT IS ORDERED that the action is dismissed without prejudice. The Court retains complete jurisdiction to vacate this Order and to reopen the action upon cause shown that settlement has not been completed and further litigation is necessary.

IT IS FURTHER ORDERED that the Clerk forthwith serve copies of this Judgment by United States mail upon the attorneys for the parties appearing in this action.

Dated this 5th day of MARCH, 19 86.

Thomas R. Brett
UNITED STATES DISTRICT JUDGE
THOMAS R. BRETT

Entered

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

FILED

MAR -5 1986

CARLIS HART

JACK O. SILVER, CLERK
U.S. DISTRICT COURT

Plaintiff(s),

vs.

No. 85-C-405-BT

UNITED STATES OF AMERICA

Defendant(s).

JUDGMENT DISMISSING ACTION
BY REASON OF SETTLEMENT

The Court has been advised by counsel that this action has been settled, or is in the process of being settled. Therefore, it is not necessary that the action remain upon the calendar of the Court.

IT IS ORDERED that the action is dismissed without prejudice. The Court retains complete jurisdiction to vacate this Order and to reopen the action upon cause shown that settlement has not been completed and further litigation is necessary.

IT IS FURTHER ORDERED that the Clerk forthwith serve copies of this Judgment by United States mail upon the attorneys for the parties appearing in this action.

Dated this 5th day of MARCH, 1986.

Thomas R. Brett
UNITED STATES DISTRICT JUDGE
THOMAS R. BRETT

entred

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

VALHOMA INDUSTRIES, INC.,)
an Oklahoma corporation,)
WILLIAM R. KINDERMAN and)
MARY L. KINDERMAN, Individually,)
and FARMLAND WHOLESALE, INC.,)
an Oklahoma corporation,)

Plaintiffs,)

vs.)

THE HOME INSURANCE COMPANY,)
a corporation,)

Defendant.)

No. 85-C-448-B ✓

FILED

MAR 5 1986 *ag*

Jack C. Silver, Clerk
U. S. DISTRICT COURT

ORDER

IT appearing to the satisfaction of this court that all matters and controversies in the above entitled action have been fully settled, adjusted and comprised between the parties, as evidenced by the signatures of their attorney on the stipulation filed herein on the 3rd day of ~~February~~ *March*, 1986; therefore,

IT IS ORDERED AND ADJUDGED that the Plaintiff's suit be and the same is hereby dismissed with prejudice, without cost to either party.

Thomas R. Brett

THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

011586:mk

IN THE UNITED STATES DISTRICT COURT FOR
THE NORTHERN DISTRICT OF OKLAHOMA

FILED

MAR 5 - 1986

Jack C. Silver, Clerk
U.S. DISTRICT COURT

IRVIN C. KELLER and WILLIAM
BANNER, for themselves and
other persons similarly
situated,

Plaintiffs,

vs.

AGRICO CHEMICAL COMPANY, a
Delaware corporation, and
THE WILLIAMS COMPANIES, a
Nevada corporation,

Defendants.


Case No. 84-C-629-E

ORDER ALLOWING DISMISSAL

Plaintiff Robert Ludwig and Defendants Agrico Chemical Company and The Williams Companies, having informed the Court that they have reached a mutually satisfactory private settlement regarding Plaintiff's claims in this action, it is hereby ORDERED, ADJUDGED AND DECREED that

Plaintiff's claims against Defendants should be dismissed with prejudice, with each party to bear their own costs and attorneys' fees.

DATED this 4th day of March, 1986.


UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT FOR
THE NORTHERN DISTRICT OF OKLAHOMA

FILED

MAR 5 - 1986

IRVIN C. KELLER and WILLIAM
BANNER, for themselves and
other persons similarly
situated,

Plaintiffs,

vs.

AGRICO CHEMICAL COMPANY, a
Delaware corporation, and
THE WILLIAMS COMPANIES, a
Nevada corporation,

Defendants.

Jack C. Silver, Clerk
U. S. DISTRICT COURT

Case No. 84-C-629-E

ORDER ALLOWING DISMISSAL

Plaintiff Joe Wright and Defendants Agrico Chemical Company and The Williams Companies, having informed the Court that they have reached a mutually satisfactory private settlement regarding Plaintiff's claims in this action, it is hereby ORDERED, ADJUDGED AND DECREED that

Plaintiff's claims against Defendants should be dismissed with prejudice, with each party to bear their own costs and attorneys' fees.

DATED this 4th day of March, 1986.

S/ JAMES O. ELLISON

UNITED STATES DISTRICT JUDGE

FILED

IN THE UNITED STATES DISTRICT COURT FOR
THE NORTHERN DISTRICT OF OKLAHOMA MAR 5 1986

IRVIN C. KELLER and WILLIAM)
BANNER, for themselves and)
other persons similarly)
situated,)

Plaintiffs,)

vs.)

AGRICO CHEMICAL COMPANY, a)
Delaware corporation, and)
THE WILLIAMS COMPANIES, a)
Nevada corporation,)

Defendants.)

Jack C. Silver, Clerk
U. S. DISTRICT COURT

Case No. 84-C-629-E

ORDER ALLOWING DISMISSAL

Plaintiff William Banner and Defendants Agrico Chemical Company and The Williams Companies, having informed the Court that they have reached a mutually satisfactory private settlement regarding Plaintiff's claims in this action, it is hereby ORDERED, ADJUDGED AND DECREED that

Plaintiff's claims against Defendants should be dismissed with prejudice, with each party to bear their own costs and attorneys' fees.

DATED this 4th day of March, 1986.

S/ JAMES C. SILVER

UNITED STATES DISTRICT JUDGE

FILED

MAR 5 - 1986

IN THE UNITED STATES DISTRICT COURT FOR
THE NORTHERN DISTRICT OF OKLAHOMA

Jack C. Silver, Clerk
U. S. DISTRICT COURT

IRVIN C. KELLER and WILLIAM
BANNER, for themselves and
other persons similarly
situated,

Plaintiffs,

vs.

Case No. 84-C-629-E

AGRICO CHEMICAL COMPANY, a
Delaware corporation, and
THE WILLIAMS COMPANIES, a
Nevada corporation,

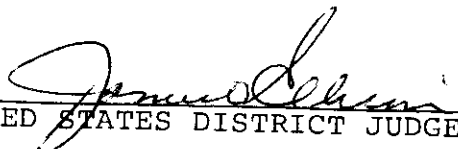
Defendants.

ORDER ALLOWING DISMISSAL

Plaintiff William L. Gordon and Defendants Agrico Chemical Company and The Williams Companies, having informed the Court that they have reached a mutually satisfactory private settlement regarding Plaintiff's claims in this action, it is hereby ORDERED, ADJUDGED AND DECREED that

Plaintiff's claims against Defendants should be dismissed with prejudice, with each party to bear their own costs and attorneys' fees.

DATED this 4th day of March, 1986.


UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT FOR
THE NORTHERN DISTRICT OF OKLAHOMA

FILED

MAR 5 - 1986

IRVIN C. KELLER and WILLIAM
BANNER, for themselves and
other persons similarly
situated,

Plaintiffs,

vs.

AGRICO CHEMICAL COMPANY, a
Delaware corporation, and
THE WILLIAMS COMPANIES, a
Nevada corporation,

Defendants.

Jack C. Silver, Clerk
U. S. DISTRICT COURT

Case No. 84-C-629-E

ORDER ALLOWING DISMISSAL

Plaintiff Irvin C. Keller and Defendants Agrico Chemical Company and The Williams Companies, having informed the Court that they have reached a mutually satisfactory private settlement regarding Plaintiff's claims in this action, it is hereby ORDERED, ADJUDGED AND DECREED that

Plaintiff's claims against Defendants should be dismissed with prejudice, with each party to bear their own costs and attorneys' fees.

DATED this 4th day of March, 1986.

UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

FILED

MAR 5 - 1986

Jack C. Silver, Clerk
U. S. DISTRICT COURT

PETER BERICK,

Plaintiff,

vs.

SPARCRAFT, INC.,

Defendant.


No. 85-C-729-E

ORDER

NOW on this 4th day of March, 1986 comes on for hearing the above styled case and the Court, being fully advised in the premises finds as follows:

Plaintiff was given forty-five (45) days from December 2, 1985 to obtain service of Defendant, following which an extension of time was granted to February 18, 1986. To date, no service has been obtained.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that this case be and is hereby dismissed.


JAMES O. ELLISON
UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

FILED

MAR 5 1986

Jack C. Silver, Clerk
U.S. DISTRICT COURT

SOUTHWESTERN BELL CORPORATION,)

Plaintiff,)

v.)

CHERRY STREET ENTERPRISES LTD.)

d/b/a BOSTON BELL COMPANY,)

MICHAEL E. YOUNT and)

JERRY TAYLOR,)

Defendants.)

No. 86-C-138C

Notice of

VOLUNTARY DISMISSAL

Southwestern Bell Corporation hereby dismisses the
above-captioned without prejudice, pursuant to Rule 41 of the
Federal Rules of Civil Procedure.

SOUTHWESTERN BELL CORPORATION

By

George M. Makohyn

GEORGE M. MAKOHYN, Its Attorney
One Bell Central
800 North Harvey, Room 310
Oklahoma City, Oklahoma 73102
Telephone: 405/236-6753

CERTIFICATE OF MAILING

On this 4th day of March, 1986, a true and correct copy of the foregoing was mailed, postage prepaid, to:

Mr. Michael E. Yount
1855 1/2 East 15th
Tulsa, Oklahoma 74104

George M. Baker

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

FILED

MAR -5 1986

GREGORY D. WILLIAMS,

Petitioner,

v.

LARRY R. MEACHUM, et al.,

Respondents.

JACK D. SILVER, CLERK
U.S. DISTRICT COURT

No. 85-C-185-C

O R D E R

The Court has for consideration the Findings and Recommendations of the Magistrate filed on February 14, 1986 in which the Magistrate recommends that the Petitioner's Application for a Writ of Habeas Corpus be denied. No exceptions or objections have been filed and the time for filing such exceptions or objections has expired.

After careful consideration of the record and the issues presented by the Application for a Writ of Habeas Corpus, the Court has concluded that the Findings and Recommendations of the Magistrate should be and hereby are affirmed and adopted as the Findings and Conclusions of this Court.

It is therefore Ordered that the Application for a Writ of Habeas Corpus be and is hereby denied.

It is so Ordered this 5 day of March, 1986.


H. DALE COOK
CHIEF JUDGE

Entered

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

FILED

MAR -5 1986

JACK C. SAYER, CLERK
U.S. DISTRICT COURT

VALHOMA INDRSTRIES, INC., et al

Plaintiff(s),

vs.

No. 85-C-448-BT

THE HOME INSURANCE CO.

Defendant(s).

JUDGMENT DISMISSING ACTION
BY REASON OF SETTLEMENT

The Court has been advised by counsel that this action has been settled, or is in the process of being settled. Therefore, it is not necessary that the action remain upon the calendar of the Court.

IT IS ORDERED that the action is dismissed without prejudice. The Court retains complete jurisdiction to vacate this Order and to reopen the action upon cause shown that settlement has not been completed and further litigation is necessary.

IT IS FURTHER ORDERED that the Clerk forthwith serve copies of this Judgment by United States mail upon the attorneys for the parties appearing in this action.

Dated this 5th day of MARCH, 19 86.

Thomas R. Brett
UNITED STATES DISTRICT JUDGE
THOMAS R. BRETT

104-5 133

U.S. DISTRICT COURT

NO. 85-C-459-E

It is therefore stipulated among the parties that the present garnishment proceeding may be and is dismissed without prejudice.

W. MICHAEL HILL
Attorney for Garnishee

DALE WARNER
Attorney for Linda Fay Jones, as parent of
Aaron Ray Burger, James Edward Burger
and Anna Marie Burger, next kin of Donald
Ray Burger, deceased

interven

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

FILED

MAR -5 1986

JACK C. SILVER, CLERK
U.S. DISTRICT COURT

AMOS O. ADETULA,

Plaintiff,

v.

YUBA HEAT TRANSFER CORP.,
a foreign corporation
domesticated in Oklahoma,

Defendant.

No. 83-C-757-B

FINDINGS OF FACT
AND
CONCLUSIONS OF LAW

The plaintiff, Amos O. Adetula, filed this action pursuant to Title VII of the Civil Rights Act of 1964, 42 U.S.C. §2000e, et seq., against the defendant, Yuba Heat Transfer Corporation, a foreign corporation domesticated in Oklahoma, seeking reinstatement, front pay and declaratory and injunctive relief.

Plaintiff, a black male, claims that he was unlawfully terminated from his job with defendant in violation of 42 U.S.C. §2000e-2(a)(1). This case was tried to the Court on November 25-27, 1985, together with an alleged constitutional claim of violation of the Fourteenth Amendment under 42 U.S.C. §1981, which was tried to a jury. In reference to the claim submitted to the jury, the jury returned a verdict for the defendant and against the plaintiff. Plaintiff's claim under Title VII, 42 U.S.C. §2000e et seq., remains for decision by the Court.

After considering the evidence, arguments of counsel, and the applicable legal authority, the Court enters the following Findings of Fact and Conclusions of Law:

FINDINGS OF FACT

1. Plaintiff is a black male citizen of the United States and a resident of the Northern District of Oklahoma. Plaintiff has timely filed a charge of discrimination with the Equal Employment Opportunity Commission and the Oklahoma Human Rights Commission with respect to his alleged racial discrimination claim. The plaintiff has received a notice of right to sue and has brought this suit within the mandatory period.

2. Defendant, Yuba Heat Transfer Corporation, is a Delaware corporation domesticated in Oklahoma which operates two facilities for the manufacture of heat exchangers and feed water heaters in the Northern District of Oklahoma.

3. Defendant, Yuba Heat Transfer, is an employer within the meaning of Title VII, 42 U.S.C. §2000e(b); is engaged in an industry affecting commerce, and has had fifteen or more employees at all times material hereto.

4. The alleged employment practices which are the subject of this action were committed within the Northern District of Oklahoma.

5. Plaintiff was employed by Yuba Heat Transfer as a maintenance electrician from March 1977 to November 10, 1982, on which date he was terminated.

6. Plaintiff offered evidence of his race, the fact of his discharge, and alleged statements and circumstances from which an inference of racial discrimination could be drawn.

7. Plaintiff offered no evidence of disparate treatment of a similarly situated non-minority employee of defendant.

8. Defendant offered evidence that plaintiff was discharged from his job for a legitimate, non-discriminatory business reason, i.e., falsification of a company record, a time card, and subsequent dishonesty regarding the time card incident.

9. The business reason offered by defendant for discharging plaintiff was not a pretext for discriminating against plaintiff on the basis of race.

10. Defendant did not intentionally discriminate against plaintiff on the basis of his race or any other basis.

11. Plaintiff was not subjected to disciplinary treatment which was more severe than administered to white employees while employed by defendant.

12. Plaintiff was not deprived of rights and privileges granted to white employees while employed by defendant.

CONCLUSIONS OF LAW

1. All filing requirements of Title VII of the Civil Rights Act of 1964, as amended in 1972, which are prerequisite to this Court's jurisdiction, have been satisfied by the plaintiff herein. 42 U.S.C. §2000e-5(e), (f)(1).

2. Yuba Heat Transfer Corporation is an employer subject to the provisions of Title VII, 42 U.S.C. §2000e(b), (h).

3. Venue is properly laid with this Court. 42 U.S.C. §2000e-5(f)(3).

4. Plaintiff established a prima facie case of racial discrimination under 42 U.S.C. §2000e-2(a)(1). McDonnell Douglas Corporation v. Green, 411 U.S. 792, 802 (1973); Kentroti v. Frontier Airlines, Inc., 585 F.2d 967, 969-70 (10th Cir. 1978).

5. Defendant rebutted this prima facie case of racial discrimination with evidence that plaintiff was discharged for a

legitimate, non-discriminatory business reason. McDonnell Douglas, supra, at 802-04. Furnco Construction Corp. v. Waters, 438 U.S. 567, 573-74 (1978).

6. Plaintiff failed to prove by a preponderance of the evidence that defendant's reason for discharging plaintiff was a pretext for racial discrimination. McDonnell Douglas, supra, at 804-05.


7. Yuba Heat Transfer Corporation did not discriminate against plaintiff on the basis of race in violation of 42 U.S.C. §2000e-2(a)(1).

8. Defendant is entitled to judgment as a matter of law on Plaintiff's Title VII claim.

9. Any Finding of Fact herein which is more properly a Conclusion of Law is incorporated hereby.

10. In keeping with the Findings of Fact and Conclusions of Law stated herein, the Court will contemporaneously enter an order granting judgment to defendant on plaintiff's Title VII claim and dismissing plaintiff Amos O. Adetula's claim against defendant under Title VII of the Civil Rights Act of 1964, 42 U.S.C. §2000e et seq.

ENTERED this 5th day of March, 1986.


THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

Entered

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

FILED

MAR -5 1986

JACK C. SILVER, CLERK
U.S. DISTRICT COURT

AMOS O. ADETULA,

Plaintiff,

v.

YUBA HEAT TRANSFER CORP.,
a foreign corporation
domesticated in Oklahoma,

Defendant.

No. 83-C-757-B

J U D G M E N T

In keeping with the verdict of the jury returned and filed herein on the 27th day of November, 1985, IT IS HEREBY ORDERED AND ADJUDGED that the defendant, Yuba Heat Transfer Corp., is to have judgment against plaintiff, Amos O. Adetula, on plaintiff's claim under 42 U.S.C. §1981, and plaintiff is to take nothing thereon.

IT IS FURTHER ORDERED that the plaintiff, Amos O. Adetula, is to take nothing against said defendant on plaintiff's claim under Title VII, 42 U.S.C. §2000e et seq., the defendant granted judgment thereon, pursuant to the Findings of Fact and Conclusions of Law entered this date.


Pursuant to Orders of this Court entered November 8, 1984, and March 15, 1985, plaintiff's attorney, Mr. Carl Robinson, was ordered to pay defendant's attorneys \$7,736.00 in attorney fees and \$81.90 in costs of securing court orders compelling answers to interrogatories.^{1/} In exercising its discretion under F.R.Civ.P. 37(d)

^{1/} The November 8, 1984, Order directed Plaintiff to reimburse defendant for attorney fees and expenses regarding defendant's Renewed Motion to Compel. The Court's intent was to order Plaintiff's Attorney to pay these costs. This apparently was the understanding of plaintiff's attorney, Carl Robinson. In Plaintiff's Proposed Findings of Fact and Conclusions of Law in Regards to Defendant's Applications for Attorneys Fees and Other Expenses, filed October 1, 1985, Mr. Robinson notes "That as a result of the battery of hearings held before the Magistrate in January 1985, attorney fees and other expenses of \$1,635.80 were imposed against this attorney."

IT IS FURTHER ORDERED that judgment is hereby entered in favor of defendant, Yuba Heat Transfer Corp., and against plaintiff's attorney, Mr. Carl Robinson, in the amount of \$3,908.95 (one-half of \$7,817.90) for attorneys' fees and other costs incurred in securing the Court's Orders regarding defendant's Renewed Motion to Compel and Renewed Motion for Sanctions.

Costs are hereby awarded against the plaintiff, and with the exception of the attorney fees and costs discussed in the immediately preceeding paragraph, the parties are to pay their own respective attorney fees.

DATED this 5 day of Mar., 1986.


THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

Entered

MAR -5 1986

BEATRICE M. IMBRIANO

JACK D. CLARK, CLERK
U.S. DISTRICT COURT

Plaintiff(s),

vs.

No. 85-C-731-BT

SOUTHPARK CERAMIC ARTS, INC.,
et al

Defendant(s).

JUDGMENT DISMISSING ACTION
BY REASON OF SETTLEMENT

The Court has been advised by counsel that this action has been settled, or is in the process of being settled. Therefore, it is not necessary that the action remain upon the calendar of the Court.

IT IS ORDERED that the action is dismissed without prejudice. The Court retains complete jurisdiction to vacate this Order and to reopen the action upon cause shown that settlement has not been completed and further litigation is necessary.

IT IS FURTHER ORDERED that the Clerk forthwith serve copies of this Judgment by United States mail upon the attorneys for the parties appearing in this action.

Dated this 5th day of MARCH, 19 86.

Thomas R. Brett
UNITED STATES DISTRICT JUDGE
THOMAS R. BRETT

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

OKLAHOMA BLACK OFFICERS, et al.,

Plaintiffs,

Civil Action No. 83-C-246-B ✓

vs.

CITY OF TULSA, et al.,

Defendants.

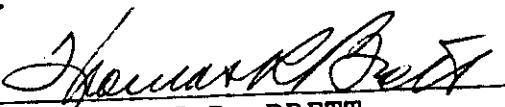
MAR 5 - 1986

JUDGMENT OF NO CAUSE FOR ACTION IN
FAVOR OF ALL DEFENDANTS AND AGAINST
PLAINTIFF ROY C. JOHNSON, ONLY


The Court having entered an Order For Dismissal With Prejudice Of All Claims Of Plaintiff Roy C. Johnson Against All Defendants, Dismissing Allegations Of Third Amended and Supplemental Complaint With Prejudice and Directing Entry of Judgment, and the Court having made an express determination that there is no just reason for delay and expressly directed entry of Judgment, in accordance with Rule 54(b) of the Federal Rules of Civil Procedure, now, therefore:


IT IS HEREBY ADJUDGED that a judgment of no cause for action in favor of all Defendants and against Plaintiff ROY C. JOHNSON, only, be entered.

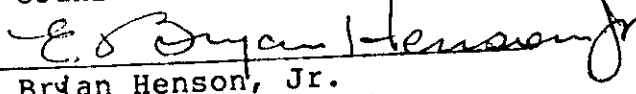
IT IS FURTHER ADJUDGED that neither Plaintiff ROY C. JOHNSON or any of the Defendants will recover their attorney fees or costs from the opposing party.



HON. THOMAS R. BRETT
United States District Judge


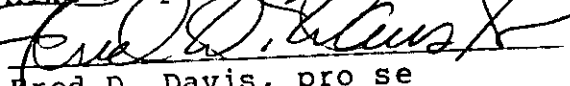
approved as to form & substance:


IMOGENE HARRIS
Assistant City Attorney
Counsel for Municipal Defendants


RILEY AND ROUMELL
By John F. Brady
Co-Counsel for Municipal Defendants


E. Bryan Henson, Jr.
Chappel, Wilkinson, Riggs,
Abne & Henson
Attorneys for FOP Defendants


ALVIN HAYES, JR.
Attorney for Plaintiff Roy C. Johnson


Mike Kerpan, pro se

Fred D. Davis, pro se
1915 N. Main
Tulsa, OK 74106

Entered

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

MAR -4 1985

GREGORY WALLACE and
SONYA WALLACE,

Plaintiffs,

v.

FRONTIER FEDERAL SAVINGS
& LOAN, a federal savings
and loan corporation, and
JEANNE MEADORS,

Defendants.

JACK C. ELMER, CLERK
U.S. DISTRICT COURT

No. 85-C-248-B ✓

O R D E R

This matter comes before the Court on defendants' "motion for partial summary judgment and motion to dismiss for lack of jurisdiction." For the reasons set forth below, the Court concludes the motion should be granted.

Plaintiffs Gregory and Sonya Wallace filed this action on March 14, 1985, against defendants Frontier Federal Savings and Loan ("Frontier") and Jeanne Meadors ("Meadors"), a branch manager for Frontier, for violations of the Fair Debt Collection Practices Act, 15 U.S.C. §§1692, et seq., and for intentional infliction of emotional distress. At the time the complaint was filed, plaintiffs characterized themselves as "legal residents of Tulsa County, Oklahoma"¹ residing in Wichita Falls, Texas. Frontier is a federal savings and loan corporation doing business in Tulsa County, Oklahoma, and with its home office in Ponca City, Oklahoma. Defendant Meadors' citizenship is unspecified.

Subsequent to defendants' filing of the motion now before the Court, plaintiffs filed an amended complaint which retained the federal claim under the Fair Debt Collection Practices Act but added diversity as an alternative basis for jurisdiction. The amended complaint also substituted a claim for invasion of privacy for the earlier intentional infliction of emotional distress claim.

Defendants' "motion for partial summary judgment and motion to dismiss for lack of jurisdiction" is grounded on the contention that a claim under the Fair Debt Collection Practice Act may only be brought against collection agencies or "debt collectors", as defined by the Act, and not against creditors or employees of creditors who seek to collect the creditors' own debts. Therefore, defendants contend, the court has no federal question jurisdiction over this action. Further, because plaintiffs were "legal residents of Tulsa County, Oklahoma" at the outset of this action, there is no diversity jurisdiction over the pendent claim.

Defendants claim that Frontier, as a creditor, and Meadors, as an employee of Frontier, fall outside the scope of the Act in that the Act only applies to "debt collectors" and not to creditors. Title 15 §1692(e) declares the purpose of the Act:

"It is the purpose of this subchapter to eliminate abusive debt collection practices by debt collectors, to insure that those debt collectors who refrain from using abusive debt collection practices are not competitively disadvantaged, and to promote consistent State action to protect consumers against debt collection abuses."
[Emphasis added].

Section 1692a(6) of the Act defines the term "debt collector":

"The term 'debt collector' means any person who uses any instrumentality of interstate commerce or the mails in any business the principal purpose of which is the collection of any debts, or who regularly collects or attempts to collect, directly or indirectly, debts owed or due or asserted to be owed or due another. Notwithstanding the exclusion provided by clause (G) of the last sentence of this subparagraph, the term includes any creditor who, in the process of collecting his own debts, uses any name other than his own which would indicate that a third person is collecting or attempting to collect such debts.....The term does not include...

(A) any officer or employee of a creditor while, in the name of the creditor, collecting debts for such creditor;

. . .

(G) any person collecting or attempting to collect any debt owed or due or asserted to be owed or due another to the extent such activity (i) is incidental to a bona fide fiduciary obligation or a bona fide escrow arrangement; (ii) concerns a debt which was originated by such person; (iii) concerns a debt which was not in default at the time it was obtained by such person; or (iv) concerns a debt obtained by such person as a secured party in a commercial credit transaction involving the creditor.

Nothing in section 1692(6) would bring Frontier, whose principal business is banking, within the ambit of the Act. Though plaintiffs allege that Frontier maintains a loan servicing department, Frontier's principal purpose of business is not the collection of debts, nor does it regularly collect debts owed or due others. The term "debt collector" also does not cover Meadors, who is an "officer or employee of a creditor" who was "collecting debts for [Frontier]" in Frontier's name. 15 U.S.C. §1692a(6)(A).


Plaintiffs argue that defendant Meadors, in attempting to collect the debt, acted in such a shocking manner as to develop "an identity separate from that of Frontier, and that thereby Frontier became a creditor using the name other than its own, fitting well within the definition of 'debt collector'". Plaintiffs also contend that a fact issue remains as to whether Meadors acted as a debt collector in her own or Frontier's name.

Despite the plaintiffs' unique construction of section 1692a(6) and the affidavits of Gregory Wallace and Sonya Wallace submitted in support, there remains no genuine issue of material fact herein. Although plaintiffs allege that Meadors' acts "were not those of a true agent of Frontier" and that Meadors acted outside Frontier's normal policy by pursuing collection herself, as branch manager, rather than allowing Frontier's loan servicing division to pursue collection exclusively, Meadors was a Frontier officer or employee collecting Frontier's debts in Frontier's name. She was not, therefore, a "debt collector" under §1692a(6). Furthermore, the affidavits contain no allegations that Meadors attempted to collect the debts in her own name or in the name of a collection agency. Plaintiffs have failed to state a claim under the provisions of the Fair Debt Collection Practices Act. This court is without federal question jurisdiction of plaintiffs' claim.

Plaintiffs contend that the Court should retain jurisdiction over the pendent claim based on diversity. Diversity jurisdiction is determined as of the date the action is commenced. Smith v.

Sperling, 354 U.S. 91, 93 n. 1 (1957); Butler v. Pollard, 482 F.Supp. 847 (E.D.Okla. 1979); Johnston v. Cordell Nat. Bank, 421 F.2d 1310 (10th Cir. 1970). Plaintiffs' amended complaint states only that plaintiffs are residents of Wichita Falls, Texas, but plaintiffs admit in their original complaint that they were legal residents of Tulsa County, Oklahoma residing in Wichita Falls, Texas. If diversity did not exist at the time the action was commenced, and if the nature of the action remains the same, subsequent events cannot create diversity. Lang v. Windsor Mount Joy Mutual Insurance Company, 487 F.Supp. 1303 (E.D.Pa. 1980). An amended complaint claiming changed residency status on a nearly identical claim as was raised in an original complaint cannot create diversity jurisdiction. The Court lacks diversity jurisdiction over plaintiffs' pendent claim. Defendants' motion for partial summary judgment and motion to dismiss is granted.

IT IS SO ORDERED, this 3rd day of March, 1986.


THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

Entered

IN THE UNITED STATES DISTRICT COURT FOR
THE NORTHERN DISTRICT OF OKLAHOMA

J.D. RYEL,
Plaintiff,

vs.

ENERGY SYSTEMS UNITED CORP.,
and NETHERVAN INDUSTRIES,
INC., d/b/a CAVALIER INTERESTS,
Defendants.

No. 85-C-1018 B

FILED

MAR 4 1986

Jack C. Silver, Clerk
U. S. DISTRICT COURT

ORDER GRANTING DEFAULT JUDGMENT AND
PERMANENT INJUNCTION

THIS matter came on to be heard on the Plaintiff's Motions for Default Judgment and Permanent Injunction to enjoin and restrain the Defendants, Energy Systems United Corporation and Nethervan Industries, Inc., and their officers, agents, employees, attorneys, and representatives from utilizing the Plaintiff's name in any fashion and connecting the same with their business. The Plaintiff appears in person and by his counsel, James R. Gotwals, and the Defendants having lawfully been served with Summons and having wholly failed to plead or otherwise Answer the Complaint served upon them, are in Default. In accordance with the evidence submitted and without the necessity of a bond or undertaking, the COURT, having considered such evidence, Affidavit, and Motion, FINDS AND CONCLUDES as follows:

FINDINGS OF FACT

1. Plaintiff, J.D. Ryel is a citizen of the State of Oklahoma, and resides in Miami, Oklahoma, in the jurisdiction of the United States District Court for the Northern District of Oklahoma.

2. Defendant, Energy Systems United Corporation, is a Delaware Corporation, with its principal place of business at 1120 A Huntington Drive, San Marino, California.

3. Cavalier Interests is a division of Defendant Nethervan Industries, Inc., and has its principal place of business in Las Vegas, Nevada. Nethervan Industries, Inc., is a Nevada Corporation, and a wholly owned subsidiary of Defendant Energy Systems United Corporation. Nethervan Industries, Inc., has its principal place of business at 324 South Third Street, Las Vegas, Nevada 89101.

4. That Plaintiff's value of conducting business without interference caused by the Defendants' use of Plaintiff's name is in excess of Ten Thousand Dollars (\$10,000.00).

5. That both of said Defendants have used Plaintiff's name and have represented to others that the Plaintiff is an officer, employee, associate, or representative of Defendant Corporations.

6. Plaintiff is not now associated with either of the Defendants and has not given either of the Defendants the right to use his name.

7. Defendants' wrongful use of Plaintiff's name has resulted and will continue to result in extensive interference with Plaintiff's business and personal dealings if the Defendants are not restrained therefrom.

CONCLUSIONS OF LAW

In view of the foregoing, and upon consideration of the evidence, the Court file, and the Defendants' failure to

appear, the Court concludes that the Plaintiff is entitled to a permanent injunction as prayed for.

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that the Plaintiff's request for a permanent injunction be and it is hereby granted without the giving of bond or other security and that Energy Systems United Corporation and Nethervan Industries, Inc., and all their officers, agents, employees, attorneys, and representatives, shall and they are hereby enjoined and restrained from using Plaintiff's name in a fashion that would represent he was or is in any way connected with the Defendants.

Dated this ^{3rd} 28th day of ^{march} February, 1986.

S/ THOMAS R. BRETT

THOMAS R. BRETT, United States
District Court Judge

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

CARL DANIEL SIMS, as Personal)
Representative of the Estate)
of CAROLYN MARIE SIMS,)
Plaintiff,)

-vs-

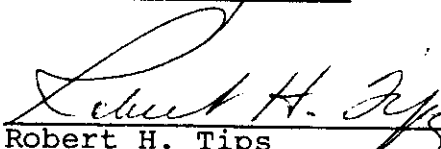
No. 85-C-587-E


AIRCRAFT ACCESSORIES, INC.,)
a corporation, and GRAYS)
AVIATION, INC., a corporation,)
Defendants.)


STIPULATION OF DISMISSAL WITH PREJUDICE

Pursuant to Rule 41(a) of the Federal Rules of Civil Procedure, Plaintiff and Defendants hereby stipulate that all claims pending in this action are hereby dismissed, with prejudice to the refiling thereof.

DATED this 14 day of February, 1986.


Robert H. Tips
Barry Epperson
ATTORNEYS FOR PLAINTIFF


Richard B. Noulles
ATTORNEY FOR AIRCRAFT ACCESSORIES
OF OKLAHOMA, INC.


Lonnie Turner
ATTORNEY FOR GRAYS AVIATION, INC.

IN THE UNITED STATES DISTRICT COURT FOR

THE NORTHERN DISTRICT OF OKLAHOMA

VERNON D. BARNES and BARBARA D.)
BARNES, husband and wife,)

Plaintiffs,)

vs.)

Case No. 84-C-836-C

VERN STOUT, d/b/a VERN STOUT'S)
AUTOS, a/k/a VERN STOUT'S MOTOR)
CO., DON MILLER, d/b/a DON)
MILLER AUTO SALES, and DOES I-X,)

Defendants.)

JOURNAL ENTRY OF JUDGMENT

This cause came on to be heard this 3rd day of March, 1986, pursuant to regular assignment for trial, the said Plaintiff being present by their attorneys, Morris and Morris by Greg A. Morris, and the Defendant, DON MILLER, d/b/a DON MILLER AUTO SALES; the Court proceeded to hear the evidence of witnesses and argument of counsel. And the Court, being fully advised, on consideration finds that the Plaintiffs have sustained the allegations of their Petition and are entitled to judgment against Defendant DON MILLER, d/b/a DON MILLER AUTO SALES.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED by the Court that the said Plaintiffs, VERNON D. BARNES and BARBARA D. BARNES, have and recover of the said Defendant DON MILLER, d/b/a DON MILLER AUTO SALES, the sum of Fifteen Thousand and 00/100 Dollars (\$15,000.00) as punitive damages, with interest hereon at the rate of twelve percent (12%) per annum, from the 20th day of June, 1983; the sum of Two Thousand, Five Hundred

and 00/100 Dollars (\$2,500.00) as and for a reasonable attorneys' fee for Plaintiffs' attorneys; and fo the costs of this action, for all of which let execution issue; to which finding and judgment the Defendant then and there excepted.

(Signed) H. Dal. Cook

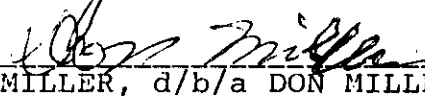
UNITED STATES DISTRICT JUDGE

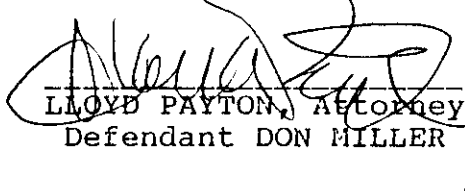
APPROVED AS TO FORM AND CONTENT:

MORRIS and MORRIS

By: 

Greg A. Morris, Attorneys
for Plaintiffs


DON MILLER, d/b/a DON MILLER'S
AUTO SALES, Defendant


LLOYD PAYTON, Attorney for
Defendant DON MILLER

Entered

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

MAR -4 1986

JACK O. SEVER, CLERK
U.S. DISTRICT COURT

GREGORY WALLACE and
SONYA WALLACE,

Plaintiffs,

vs.

FRONTIER FEDERAL SAVINGS
& LOAN, a federal savings
and loan corporation, and
JEANNE MEADORS,

Defendants.

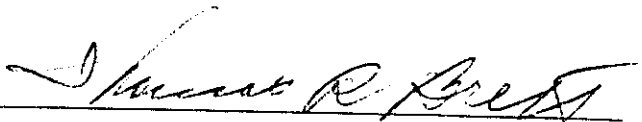
No. 85-C-248-B ✓

JUDGEMENT

This action having come before the Court on dispositive motion of the defendants, and the Court having dismissed the matter by Order entered this date,

IT IS ORDERED AND ADJUDGED that plaintiffs, Gregory Wallace and Sonya Wallace, take nothing, that the action be dismissed for lack of subject matter jurisdiction, with costs assessed against the plaintiffs.

Dated at Tulsa, Oklahoma, this 3rd day of March, 1986.



THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

Entered

MAR 4 1966

Jack C. Silver, Clerk
U. S. DISTRICT COURT

[illegible]

No. 84-C-894-B

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)
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O R D E R

remand. For the reasons set forth below, the motion is granted.

The following facts have been stipulated by the parties:

1. Plaintiff is a municipal corporation organized and existing under the laws of the State of Oklahoma.

2. Defendant is a railroad corporation organized and existing under the laws of the State of Delaware with its principal place of business in Fort Worth, Texas, licensed to do business and doing business as a railroad company in the State of Oklahoma.

3. Defendant is the owner of certain real property in Creek County, Oklahoma, which extends one hundred feet (100') on either side of its main track as it runs through the City of Bristow, Oklahoma. A plat showing the portion of defendant's property involved herein is attached hereto marked Exhibit "A" and made a part hereof by reference.

4. Many years ago defendant railroad constructed a depot building and platform as indicated on the plat, Exhibit "A". At the time said depot was constructed, it was used for the purposes of caring for arriving and leaving passengers and their baggage as well as the handling of small parcels referred to as "less than carload freight", mail and milk and cream which were handled individually. For the past ten years or more there has been no passenger business or less than carload freight business mail or milk and cream handled by defendant at Bristow. All of defendant's business is now the transportation of freight in carload lots.

5. Defendant applied to the Oklahoma Corporation Commission for authority to close its station at Bristow and dispense with station agent service and was granted authority so to do on the 20th day of December, 1983. A full, true and correct copy of the Oklahoma Corporation Commission Order granting that authority is attached hereto marked Exhibit "B" and made a part hereof by reference.

6. On the 22nd day of October, 1984, plaintiff, City of Bristow, filed its Petition in the District Court of Creek County, State of Oklahoma, Case No. C-84-168-B, seeking to acquire by eminent domain the following described real property:

All that property belonging to the defendant [Burlington Northern Railroad Company] West of the present railroad trackage in place and in use, excluding a parallel 10 foot strip immediately West of said trackage, said strip running generally North and South between 6th and 7th Streets in Bristow, Oklahoma, Creek County, said strip being reserved to the defendant, to provide adequate space for assuring a continued operation and maintenance by the defendant's railroad.

7. Plaintiff also filed a Petition for Injunction in said suit to enjoin defendant from razing its station building pending the order of the Court. Subsequently, the parties entered into a stipulation that a temporary injunction could be entered, that a \$1,000.00 bond posted by plaintiff as ordered by the Court could be withdrawn without any bond being posted, and that said stipulation would not serve as a waiver of the rights of either party.

8. Plaintiff's stated reason for condemning the depot is set forth in its Resolution of Necessity, attached hereto marked Exhibit "C" and made a part hereof by reference. Plaintiff claims the necessity of its condemnation of said depot building is its "great historical interest" and the fact that

"many historical events have occurred at the ... and ... it is important to preserve matters of historical interest...and the City of Bristow is in need of a place for the repository of matters of historical interest... and that such building would be very appropriate for such purpose."

9. Defendant continues to operate trains over its mainline track through Bristow.

10. Plaintiff's powers of eminent domain are conferred by 27 O.S. 1981 §5 and 66 O.S. 1981 §§ 53, 57. Whether plaintiff's condemnation powers so granted are sufficient to allow it to condemn defendant's depot is an issue of law to be determined by this Court. Plaintiff contends that it has such condemnation power. Defendant denies that the city has the right to condemn, claiming that the property was granted by the United States for

railroad purposes, and to allow condemnation would substantially interfere with defendant's interstate operations as a railroad company.

In addition to the above facts stipulated by the parties, the following considerations are relevant herein.

The condemnation action and the petition for injunction filed in the District Court in and for Creek County, Oklahoma were consolidated in state court prior to removal. At the status conference held before this Court, the parties agreed the suit for injunction is properly before this Court. The motion to remand is therefore addressed to the condemnation aspect of the action. Plaintiff proposes three reasons why the condemnation action should not have been removed: 1) lack of diversity of citizenship; 2) lack of the requisite jurisdictional amount; and 3) the condemnation action had not yet become a judicial proceeding at the time of removal.

Though plaintiff admits defendant's principal place of business is in Fort Worth, Texas, it claims lack of diversity based on the fact defendant "carries on an extensive railroad operation within the state of Oklahoma and has designated a service agent ... for the purpose of receiving service ...". Because defendant is a Delaware corporation with its principal place of business in Texas, defendant is not a citizen of the state of Oklahoma. Diversity therefore exists herein. 28 U.S.C. §1332(c).

Plaintiff contests defendant's statement of the amount in controversy herein, contending it does not meet the jurisdictional amount requirement. Once challenged, the party seeking to invoke the jurisdiction of the federal courts has the burden of proving its existence by showing that it does not appear to a legal certainty that the claim is for less than the jurisdictional amount. St. Paul Mercury Indemnity Co. v. Red Cab Co., 303 U.S. 283, 288 (1938); Wright, Miller & Cooper, Federal Practice and Procedure: Jurisdiction 2d §3702. Defendant filed an affidavit of a licensed Creek County real estate broker stating the property has a value in excess of \$10,000.00. Plaintiff's challenge is unsubstantiated. In light of the evidence before the Court, defendant has met its burden of showing the amount in controversy meets the jurisdictional requirement.

In Proposition III of its motion to remand, plaintiff contends the condemnation proceeding it brought in state court had not yet become a civil action capable of being removed. The condemnation proceeding brought by plaintiff herein is governed by the procedures contained in 66 Okl.St.Ann. §51 et seq., since the procedures applicable to the taking and condemning of land by railroads are applicable to a municipality's taking of property by eminent domain in Oklahoma. Harn v. State ex rel. Williamson, 87 P.d 127, 129 (Okla. 1939); Shell Petroleum Corp. v. Town of Fairfax, 69 P.2d 649, 651 (Okla. 1937). Section 53 of Title 66 calls for the appointment of three commissioners by the district judge of the county in which the property is situated:

"§ 53. Taking by eminent domain--Commissioners--
Appointment and proceedings--Right to con-
struct road

If the owner of any real property or interest therein, over which any railroad corporation, incorporated under the laws of this state, may desire to locate its road, shall refuse to grant the right-of-way through and over his premises, the district judge of the county in which said real property may be situated shall, upon the application or petition of either party, and after ten (10) days' notice to the opposite party, direct the sheriff of said county to summon three disinterested freeholders, to be selected by said judge as commissioners, and who shall not be interested in a like question.

The condemnor shall give notice to a condemnee by personal service or by leaving a copy of the notice at the condemnee's place of residence with some member of his family over fifteen (15) years of age, or by publication in the case of a condemnee who resides out of this state or a resident of this state who has departed here from with intent to avoid service of notice, or whose whereabouts or identity the condemnor, or his attorney, upon diligent inquiry is unable to ascertain, or an unknown heir, successor or assign of one in whom some right, title or interest in the property concerned was possessed, by publishing such notice once a week for two (2) consecutive weeks in a newspaper authorized by law to publish legal notices in the county where the petition is filed, the ten-day period to begin with the first publication. A copy of such notice and a copy of the petition shall be mailed to such opposite party's last-known mailing address within five (5) days of the first publication thereof. The procedure for service by publication as authorized herein shall in all other respects be as provided by law for service by publication in civil actions, except summons need not first be issued.

The commissioners shall be sworn to perform their duties impartially and justly; and they shall inspect said real property and consider the injury which said owner may sustain by reason of the condemnation and they shall assess the damages which said owner will sustain by such appropriation of his land, irrespective of any benefits from any improvements proposed; and they

shall forthwith make report in writing to the clerk of the court, setting forth the quantity, boundaries, and value of the property taken, and amount of injury done to the property, either directly or indirectly, which they assess to the owner; which report must be filed and recorded by the clerk. A certified copy of the report may be transmitted to the county clerk of the county where the land lies, to be by him filed and recorded (without further acknowledgment or proof) in the manner and with like force and effect as is provided for the recording of deeds. And if said corporation shall, at any time before it enters upon said real property for the purpose of constructing said road, pay to said clerk for the use of said owner the sum so assessed and reported to him as aforesaid, it shall thereby be authorized to construct and maintain its road over and across said premises."

Section 55(A) of Title 66 provides that the commissioners' report may be reviewed by the district court upon the filing of written exceptions within thirty days after the commissioners' report is filed. Alternatively, a party may demand a jury trial on the issue of compensation within 60 days after the commissioner's report is filed.

"55. Review of commissioner's report--Jury trial--Notice--Costs

(A) The report of the commissioners may be reviewed by the district court, on written exceptions filed by either party, in the clerk's office within thirty (30) days after the filing of such report; and the court shall make such order therein as right and justice may require, either by confirmation, rejection or by ordering a new appraisal on good cause shown; or either party may within sixty (60) days after the filing of such report file with the clerk a written demand for a trial by jury, in which case the amount of damages shall be assessed by a jury, and the trial shall be conducted and judgment entered in the same manner as civil actions in the district court. If the party demanding such trial does not recover a verdict more favorable to him than the assessment of the commissioners, all costs in the district court may be taxed against him."

The City contends that because the condemnation proceeding herein had not reached the stage when defendant could demand a jury trial or file written exceptions with the state court, the proceeding had not become a civil action and was not removable. Defendant filed its petition for removal before the state judge had selected the three commissioners.

The Court proceeds under the following guidance provided in Wright & Miller, Federal Practice and Procedure: Civil §3055:

"The circumstance under which a state condemnation can be brought to federal court is less straightforward if, as is true in many states, the state law calls for a prior administrative assessment of just compensation before the proceeding reaches a court. The question when and how either the condemnor or the landowner can invoke federal jurisdiction when the state procedure does use an administrative tribunal is both complex and confused. Analysis must begin with the 1954 decision of the Supreme Court in Chicago, R.I. & P.R. Company v. Stude, 346 U.S. 574, for it is principally that decision that managed to 'cloud a formerly well-established area of the law.' [Quoting The Supreme Court, 1953 Term, 68 Harv.L.Rev. 6, 179 (1954)]."

In Stude, a Delaware-incorporated railroad sought to condemn land located in Iowa and owned by Iowa citizens. As required by Iowa statute, it filed a petition with the county sheriff, who appointed a commission of six resident freeholders to assess just compensation. The commissioners appraised the land for an amount greater than the railroad was willing to pay, but the railroad deposited the amount assessed with the sheriff, took possession of the land, then, as authorized by the Iowa condemnation statute, appealed from the commissioners' appraisal to a jury trial.

The railroad then attempted to remove the action to federal court, motivated by the alleged antagonism toward the condemnation by persons in the community. On appeal, the Supreme Court determined that the railroad could not remove the action to federal court. Though Iowa case law specified that the condemnor is the defendant on appeal in a condemnation proceeding, federal law determines who is the defendant for the purposes of removal under 28 U.S.C. §1441(a). The Court found the railroad was the plaintiff in that it had initiated the proceedings before the state administrative body.

The railroad's right to remove as defendant is not disputed in the case at bar. Rather, the parties dispute the proper time for removal. As stated in Wright & Miller, section 3055:

"Even though the landowner's right to take the case to federal court by removal is clear enough, nice problems of timing may arise. It has long been held that a landowner cannot remove state administrative proceedings, and must wait until the case becomes a civil action pending before those exercising a judicial function. Mississippi & Rum River Boom Co. v. Patterson, 98 U.S. 403 (1878). Under the Iowa statute [in Stude] the proceeding becomes judicial when an appeal is perfected from the commissioners and the jurisdiction of the state district court is invoked."

The Stude Court determined that an Iowa condemnation proceeding before a sheriff is administrative until an appeal has been taken to the district court of the county, at which time the proceeding becomes a civil action pending before "those exercising judicial functions" for the purpose of reviewing the question of damages. Stude, 346 U.S. at 578. Once the

jurisdiction of an Iowa State District Court is invoked, the condemnation proceeding becomes a civil action subject to removal. Id. at 578-9.

Two years after Stude, the United States District Court of Appeals for the Eighth Circuit focused on Nebraska's condemnation procedures, whereby a three judge condemnation court appointed by the Nebraska Supreme Court assessed the value of a parcel of property. Village of Walthill, Nebraska v. Iowa Electric Light & Power Co., 228 F.2d 647 (1956). The Village of Walthill had instituted a proceeding with the State Supreme Court to condemn a gas distribution plant owned by defendant Iowa Electric Light and Power. The Supreme Court in turn appointed a court of condemnation consisting of three state district court judges. Iowa Electric removed the action to Federal Court and the Village of Walthill moved to remand on the ground the action had not reached the maturity of a civil action. The District Court overruled the motion but the Eighth Circuit reversed for the reason that, under Nebraska law, the Village's filing with the State Supreme Court did not constitute the commencement of a civil action. The three-judge panel of state district judges was "merely a valuation proceeding." Id., 228 F.2d at 653. The Court noted that Nebraska statutes do not give the condemnation court jurisdiction to determine issues other than those strictly relating to value, whereas in a civil action, a defendant has the right to assert all his defenses.

In Mississippi & Rum River Boom Co. v. Patterson, 98 U.S. 403 (1878), the Supreme Court analyzed the condemnation procedure of the State of Minnesota. The condemnor, Mississippi and Rum River Boom Company, had applied to the state district court for the appointment of commissioners to appraise the land's value. The Court held:

"The proceeding in the present case before the commissioners appointed to appraise the land was in the nature of an inquest to ascertain its value, and not a suit at law in the ordinary sense of those terms. But when it was transferred from the award of the commissioners, it took, under the statute of the State, the form of a suit at law, and was thenceforth subject to its ordinary rules and incidents."

98 U.S. at 406-7.

Defendant Burlington Northern refers the Court to Madisonville Traction Company v. St. Bernard Mining Company, 196 U.S. 239 (1905), a case construing the Kentucky condemnation procedure. The Kentucky procedure authorized a condemnor to file a description of the subject property in the office of the clerk of the county court "and have commissioners appointed to assess the damages which the owner is entitled to receive." 196 U.S. at 241. The condemnor in Madisonville Traction waited until after the commissioners had made their assessment to file for removal. The issue presented was whether the property owner was obligated to wait until after the case had been taken by appeal to a state circuit court before properly removing the action to Federal Court. The Court permitted the removal taken prior to appeal but after the filing of the commissioners' award.

Defendant Burlington Northern also cites the companion cases of Kansas City v. Metropolitan Water Co., 164 F.2d 728 (D.C.Kan. 1908) and Metropolitan Water Co. v. Kansas City, 164 F. 736 (D.C.Kan. 1908) in support of its position. The judge therein held that under the Kansas condemnation statute the condemnor city could not carry the condemnation proceedings to the point of divesting the owner of the property of title and possession of the property before the case could be removed to federal court. 164 F. at 732. Under the Kansas statute, "the title and right of possession of the owner is divested and all fixed liens on the property cut off on payment of the amount awarded at the first instance trial [before the appointed commissioners], if the electors of the city approve the purchase at the price fixed by the commissioners, notwithstanding an appeal, as to the amount, is allowed by the owner to the district court."

In Searl v. School District No. 2, 124 U.S. 197 (1888), cited by defendant with approval, the Court held that a Colorado condemnation action was "judicial" and a suit at law since upon the filing of a petition the plaintiff could opt for either the appointment or a commission of three commissioners or a jury of six freeholders to ascertain the damages or compensation to be allowed. If the plaintiff chose the jury option, the statute prescribed "in such case the mode of trial, at which the court or judge shall preside in the same manner and with like power as in other cases; that evidence shall be admitted or rejected by the court or judge according to the rules of law; and at the

conclusion of the evidence that the matters in controversy may be argued by counsel to the jury, and at the conclusion of the argument that the court or judge shall instruct the jury in writing in the same manner as in cases at law.....Such a proceeding, according to the decision of this court in Kohl v. U.S., 91 U.S. 367, is a suit at law within the meaning of the Constitution of the United States and the Acts of Congress conferring jurisdiction upon the Courts of the United States." Searl, 124 U.S. at 198-9.

Defendant also cites Road District v. St. Louis Southwestern Railway Company, 257 U.S. 547 (1922) as supporting its position. In that case, the Supreme Court determined that an Arkansas statutory proceeding to assess benefits and damages growing out of a road improvement "was a judicial tribunal from the time the Commissioners filed the book of assessment in its clerk's office and asked its confirmation." 257 U.S. at 556.

Since Oklahoma has a different statutory condemnation scheme, the cases cited above do not settle the issue herein. This Court's task is to determine at which point an Oklahoma condemnation action becomes a judicial action subject to removal.

"The obvious moral is that in each case a nice analysis of the state procedure, and the construction put on it by the courts of the state, will be required in order to determine when the proceeding matures into a civil action giving rise to a right of removal. But just as the Stude case held that federal courts must decide for themselves, uncontrolled by state law, who is a defendant for purposes of removal, it would seem that ultimately it is a federal question whether a particular state procedure is administrative or judicial, and that although the federal court may look to the state label for the procedure, it is not controlled by it."

Wright & Miller, Federal Practice and Procedure: Civil §3055.

In Oklahoma City v. Morris, 405 P.2d 1 (Okla. 1965), the Oklahoma Supreme Court unanimously held that the acts of a state district judge in the appointment of commissioners in a condemnation proceeding are purely ministerial and that a judge is without authority to make a judicial determination until an objection is made to the completed report of the commissioners. Morris distinguished between the acts of a district judge in selecting and appointing the commissioners and the acts of a district court, as the Court had done previously in Wrightsmen v. Southwestern Natural Gas Co., 46 P.2d 925 (Okla. 1935). In Wrightsmen, the Oklahoma Supreme Court pointed out that the language in the 1931 condemnation procedure statute provided for the appointment of commissioners by the district judge and not the district court. "[T]he earliest time at which any question may be presented [by the provisions of the 1931 statute] to the court proper as distinguished from the judge thereof is upon objections filed by either party to the report of the commissioner or upon a written demand for jury trial." Id. at 929. A comparison of §11933 and the modern 66 Okl.St. Ann. §55 reveals that the only difference is the time in which a written demand for trial by jury may be filed (thirty vs. sixty days).

In Town of Ames v. Wybrandt, Judge, 220 P.2d 693 (Okla. 1950), the court held that the trial judge had properly declined to pass on the merits of a motion to dismiss filed the day the commissioners had been appointed. "Such judicial determination

is not proper until the matter of condemnation is brought before the Court by objection to the report of the Commissioners for therefore the functions of the Judge in the appointment of Commissioners are ministerial and not judicial." Id. at 696.

Though the construction placed on the condemnation statute by the Oklahoma courts does not control a federal court's determination of when the proceeding becomes "judicial", Road District v. St. Louis S.W. Ry. Co., 257 U.S. 547, 558 (1922), this Court finds the rationale persuasive and concludes that a condemnation action under Oklahoma law becomes a removable judicial action upon objections filed to the report of the commissioners or by written demand for a trial by jury, pursuant to 66 Okl.St.Ann. §55.

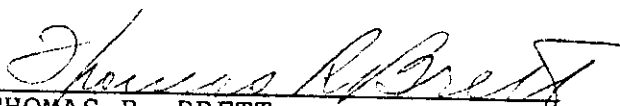
Defendant argues that the procedure was judicial and thus removable since the condemnation action herein was filed and given a case number in Creek County, Oklahoma District Court. The court finds the argument unpersuasive. The appointment of commissioners is a purely ministerial act by the district judge. An Oklahoma condemnation proceeding does not become "judicial", constituting an action between adversary parties subject to the normal incidents of a civil suit, until after the commissioners have issued their report. Indeed, this proceeding has yet to reach the stage where commissioners are appointed.

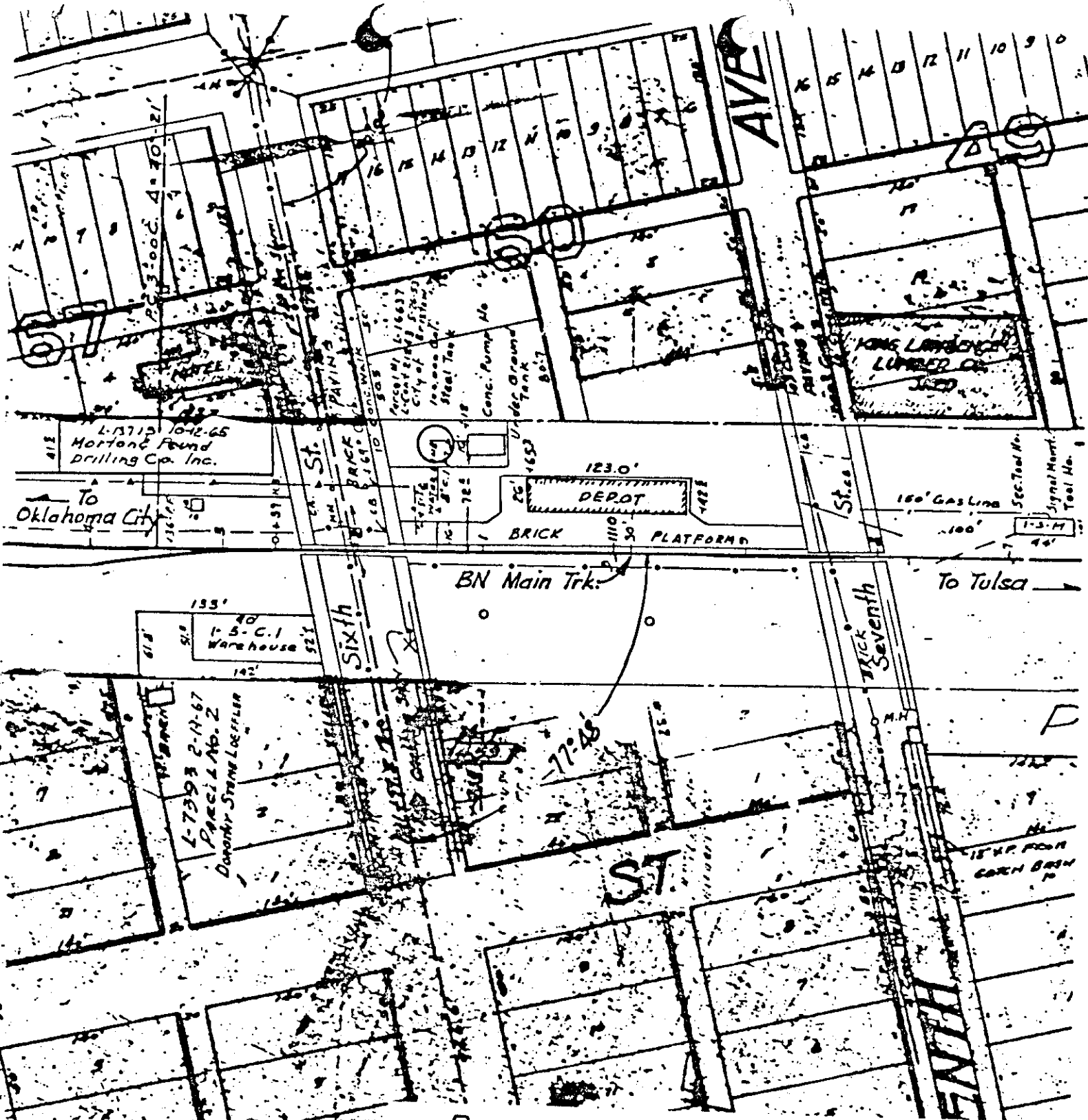
Defendant also objects to the impracticality of remanding the action since defendant intends to remove the action following the filing of the commissioner's report. Though defendant claims

there would be "no justification for such a result," this Court cannot proceed without jurisdiction, though it concedes the logical force of this argument.

Plaintiff's motion to remand is granted. This matter is hereby remanded to permit the implementation of the state statutory eminent domain scheme as aforesaid.

IT IS SO ORDERED this 4th day of March, 1986.


THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE



BURLINGTON NORTHERN RAILROAD COMPANY

SPRINGFIELD REGION, TULSA DIVISION

PRINT SHOWING

PROPERTY IN VICINITY OF STATION BUILDING

Exhibit "A" Line Segment 1003, M.P. 459
BRISTOW, CREEK COUNTY, OKLAHOMA

SCALE: 1" = 100'

ENGINEERING DIVISION

JANUARY 31, 1985

SPRINGFIELD, MO.

See Dwg. 20002-439

1:20
12/9/83
BEFORE THE CORPORATION COMMISSION

APPLICATION OF BURLINGTON)
NORTHERN RAILROAD COMPANY) CAUSE NO. 28504
FOR AUTHORITY TO CLOSE)
STATION AT BRISTOW, OKLAHOMA)
AND TO CENTRALIZE ITS) 250429
AGENCY AT STROUD, OKLAHOMA.) ORDER NO.

HEARING: December 9, 1983 before Charles D. Dudley, Referee.

APPEARANCES: Dennis S. Boxeur, Attorney for Applicant.
James W. Bolt, Deputy General Counsel-Transportation,
for the Commission.

BY THE COMMISSION:

The Corporation Commission of the State of Oklahoma being regularly in session and the undersigned Commissioners being present and participating, the above-entitled Cause comes on for consideration of the Referee's Report and Recommendations and for Order of the Commission in this proceeding.

Upon filing of the above application it was assigned to a Referee for hearing, and upon proper notice given and upon hearing, the Referee filed his Report. There were no protests to this application and parties waived right to receive advance notice of the filing of the report and time to file exceptions.

Upon full and fair consideration of the evidence and the Referee's Report, the Commission finds that the Report is in all respects fair, proper and correct, and that it should be adopted as the Findings and Conclusions of the Commission.

ORDER

IT IS THEREFORE THE ORDER OF THE COMMISSION that the Referee's Report and Recommendations, filed herein, is hereby adopted as the Findings and Conclusions of the Commission in this Cause.

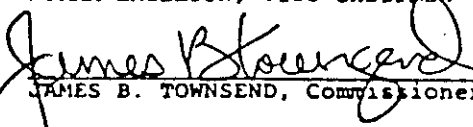
IT IS FURTHER ORDERED that the Burlington Northern Railroad Company is hereby authorized to close its station at Bristow, Oklahoma, and to centralize its agency at Stroud, Oklahoma, and continue serving the public at Bristow through its Stroud agency.

DONE AND PERFORMED THIS 20th DAY OF DECEMBER, 1983.

CORPORATION COMMISSION OF OKLAHOMA


HAMP BAWER, Chairman

NORMA EAGLETON, Vice Chairman


JAMES B. TOWNSEND, Commissioner

ATTEST


BERDEE S. HOLT, Secretary

lw

Exhibit 'B'

RESOLUTION OF NECESSITY

WHEREAS, the Burlington Northern Railway Depot in Bristow, Oklahoma, is of great historical interest having served this area for many years and

WHEREAS, many historical events have occurred at the Burlington Northern Depot, and

WHEREAS, it is important to preserve matters of historical interest, and

WHEREAS, Burlington Northern has indicated its intention to demolish this historical landmark, and

WHEREAS, The City of Bristow is in need of a place for the repository of matters of historical interest to Bristow and the surrounding area, and that such building would be very appropriate for that purpose,

NOW, THEREFORE, BE IT RESOLVED that it is necessary for the City of Bristow to acquire the Depot to prevent its demolition and to preserve it as an historical building, to utilize it for storage and display of items of historical interest, and in connection therewith to take such steps, actions and measures as may be necessary to promote the safe use thereof and minimize any effect upon the operations of said Burlington Northern on the adjacent tracts.

BE IT FURTHER RESOLVED that the City Attorney be hereby directed to take such steps and actions necessary to carry out the intent and purpose of this Resolution.

Passed this 4th day of September, 1984.

ATTEST:

Marvin L. Veit
Marvin L. Veit, Mayor

Shirley Jones
City Clerk
(SEAL)

Exhibit "C"

this Judgment at the rate specified in 28 U.S.C. §1961, together with all costs of this action including a reasonable attorney's fee in the sum of \$22,000.00.

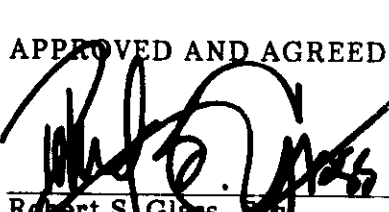
IT IS THEREFORE ORDERED AND DECREED by this Court that the Plaintiff, Minolta Corporation, shall have and recover of and from the Defendant, William L. Moore III, under Count VI the sum of \$417,732.73, together with interest accruing thereon from the date of this Judgment at the rate specified in 28 U.S.C. §1961, together with all accrued and accruing costs of this action including a reasonable attorney's fee in the sum of \$22,000.00, for all of which let execution issue.

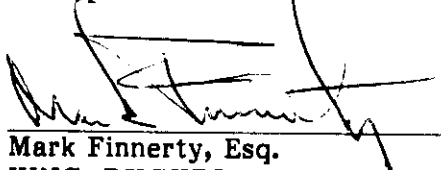
IT IS SO ORDERED this 28th day of February, 1986.

S/ THOMAS R. BRETT

THE HONORABLE THOMAS R. BRETT,
JUDGE OF THE DISTRICT COURT

APPROVED AND AGREED TO:


Robert S. Glass, Esq.
GABLE & GOTWALS, INC.
Attorneys for Plaintiff, Minolta
Corporation


Mark Finnerty, Esq.
KING, RUCKER & FINNERTY, INC.
Attorneys for Defendant,
William L. Moore III


William L. Moore III

Entered

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

RANDY ABERCROMBIE,

Plaintiff,

v.

No. 84-C-55-B ✓

CITY OF CATOOSA, OKLAHOMA, A
municipal corporation; MAYOR
CURTIS CONLEY, and POLICE CHIEF
BENNY DIRCK,

Defendants.

FILED

MAR 4 1986 *48*

Jack C. Silver, Clerk
U. S. DISTRICT COURT

AMENDED JUDGMENT

In keeping with the Court's order of this 3rd day of March, 1986, IT IS HEREBY ORDERED the plaintiff, Randy Abercrombie, is to take nothing against the defendant, Police Chief Benny Dirck, and the defendant Benny Dirck is hereby granted judgment against the plaintiff, Randy Abercrombie, on plaintiff's claim, and the costs herein are assessed against the plaintiff if timely applied for by defendant pursuant to local rule.

DATED at Tulsa, Oklahoma, this 3rd day of Mar, 1986.


THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

Entered

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

C. V. HILL and ROY C. JOHNSON,
OKLAHOMA BLACK OFFICERS, INC.,
Individually and on Behalf of
All Other Similarly Situated,

Plaintiffs,

Civil Action No. 78-C-561-BT

vs.

TULSA POLICE DEPARTMENT, et al.,

Defendants.

FILED

MAR 4 1986

Jack C. Silver, Clerk
U. S. DISTRICT COURT

CONSENT JUDGMENT

This matter was tried before the Court on October 26 through October 30, 1980. On January 13, 1982, the Court entered an Opinion, Findings of Fact and Conclusions of Law which ordered that ROY C. JOHNSON be reinstated to his position as a police officer in the Tulsa Police Department and that he be awarded back pay from September 1, 1977 through October 31, 1981 in the amount of \$16,221.00. On April 8, 1980, the Court entered an Amendment to Findings of Fact and Conclusions of Law Filed January 13, 1982 which amended the January 13, 1982 Opinion and awarded ROY C. JOHNSON a total back pay award of \$28,336.73. On May 28, 1982, the Court entered an Order which ordered that ROY C. JOHNSON be reinstated effective June 1, 1982 and that his claim for sick days, holidays, vacation time, etc., were merged in the April 8, 1982 Amendment to Findings of Fact and Conclusions of Law filed January 13, 1982. On January 17, 1983, ROY C. JOHNSON filed a Release and

Satisfaction of Judgment. The parties agree that, in the prior orders listed above, the Court did not order back pay from November 1, 1977 until the time of reinstatement on June 1, 1982. A dispute has also arisen over whether or not the amount of back pay received by ROY C. JOHNSON for the period from August 31, 1977 through October 31, 1981 was correct. Defendants specifically deny any allegations of wrongdoing and assert that they are innocent of any wrongdoing or of any liability. The parties hereto understand and agree that this Consent Judgment does not constitute an admission of liability, fault or guilt on the part of the Defendants. The parties stipulate and agree to the entry of the following judgment:

1. IT IS HEREBY ADJUDGED that ROY C. JOHNSON be awarded \$16,000.00, payable upon entry of this Judgment, less any and all state, federal and local payroll and income taxes and social security taxes and pension fund contributions owed by ROY C. JOHNSON solely for the alleged loss of pension benefits and back pay for the period from August 1, 1977 through October 31, 1981;

2. IT IS FURTHER ADJUDGED that if ROY C. JOHNSON resigns and leaves the Police Department on or before December 31, 1986, an additional \$9,000.00, less all required federal, state and local payroll, social security and income taxes and pension fund contributions owed by ROY C. DJOHNSON will be paid to ROY C. JOHNSON to cover the back pay for the period of November 1, 1981 through June 1, 1982;

3. IT IS FURTHER ADJUDGED that neither party shall recover their costs or attorney fees in this matter.

S/ THOMAS R. BRETT

HON. THOMAS R. BRETT

Approved as to form & substance:

Imogene Harris
IMOGENE HARRIS
City Attorney
Attorney for Defendants

John F. Brady
RILEY AND ROUMELL
JOHN F. BRADY
Co-Counsel for Defendants

Alvin Hayes, Jr.
ALVIN HAYES, JR.
Attorney for Plaintiff

2/28/86

Yatman

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

MERLIE D. BETZLER and
JOHN WESLEY BETZLER,
Plaintiffs,

vs.

THE CITY OF SAPULPA
OKLAHOMA, et al,

Defendants.

No. 83-C-706-B

FILED

FEB 4 1986

Jack C. Silver, Clerk
U. S. DISTRICT COURT

ORDER

Upon Plaintiffs' Suggestion for Dismissal with Prejudice, the
Court finding that Plaintiffs' claims have been satisfied,

IT IS HEREBY ORDERED that this case is dismissed with
prejudice.

THOMAS R. BRETT

THOMAS R. BRETT
U. S. District Judge

Entered

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

FILED

MAR 4 1986

RANDY ABERCROMBIE,

Plaintiff,

v.

CITY OF CATOOSA, OKLAHOMA, a
municipal corporation; MAYOR
CURTIS CONLEY, and POLICE CHIEF
BENNY DIRCK,

Defendants.

Jack C. Silver, Clerk
U. S. DISTRICT COURT

No. 84-C-55-B ✓

ORDER SUSTAINING DEFENDANT DIRCK'S
MOTION FOR JUDGMENT NOTWITHSTANDING
THE VERDICT

Defendant Dirck's motion for judgment notwithstanding the verdict and alternative motion for new trial is before the Court for decision. On July 30, 1985, the jury rendered a verdict in favor of the plaintiff, Randy Abercrombie ("Abercrombie") and against the defendant, Police Chief Benny Dirck ("Dirck"), for \$7500.00 on plaintiff's property interest claim, \$125,000.00 on plaintiff's First Amendment claim, and for \$50,000.00 punitive damages. The Court entered judgment thereon.

The standards for granting or denying a motion for judgment NOV are essentially the same standards as for granting or denying a motion for directed verdict. Barnett v. Life Insurance Company of the Southwest, 562 F.2d 15 (10th Cir. 1977), Wilkin v. Sunbeam Corporation, 377 F.2d 344 (10th Cir. 1967), and Swearngin v. Sears, Roebuck & Co., 367 F.2d 637 (10th Cir. 1967). In passing on a motion for judgment NOV ". . . the court is not free to

weigh the evidence or to pass on the credibility of witnesses or to substitute its judgment of the facts for that of the jury." 9 Wright & Miller, Federal Practice & Procedure: Civil §2542, pp. 543-4. If there is conflicting evidence or insufficient evidence to grant a directed verdict, a judgment notwithstanding the verdict should not be granted. Symons v. Mueller Company, 493 F.2d 272 (10th Cir. 1974).

A motion for new trial should not be granted unless the court determines that prejudicial error entered the record or that substantial justice has not been done. Tidewater Oil Co. v. Waller, 302 F.2d 638, 643 (10th Cir. 1962) and Seven Provinces Ins. Co. Ltd. v. Commerce & Industry Ins. Co., 65 F.R.D. 674, 688 (W.D.Mo. 1975).

Abercrombie contends herein that he was wrongfully denied a vested property interest in wrecker referrals and that his liberty interest of freedom of speech and association was violated¹; all because he supported a losing candidate for mayor of Catoosa, Oklahoma. Plaintiff's claim is centered in his interpretation of 47 Okl.St.Ann. §951 et seq.

The Court's Order of April 8, 1985, overruling the defendant's motion for summary judgment pursuant to Fed.R.Civ.P. 56 discusses plaintiff's Count II 42 U.S.C. §1983 claim and stated at page 14:

¹ Basically plaintiff contends he was denied a property interest; he was not denied a liberty interest as he admittedly supported the candidate of his choice, but perhaps was retaliated against for doing so.

"Though the Court has serious problems with plaintiff's interpretation, it is resolving its doubts in favor of plaintiff for the purposes of trial. After trial the Court will again entertain argument on the issue. The action will therefore proceed against defendant Chief Dirck on plaintiff's \$1983 claim for depriving plaintiff of a property interest in continued wrecker referrals in April of 1983."

Plaintiff asserts his property right and liberty interest claim stems from the statutory language, and when in April 1983, Dirck, for political reasons, ordered plaintiff's name removed from the wrecker referral rotation. If 47 Okl.St.Ann. §§952 and 955 do not create a property interest in plaintiff, his Count II claim fails. Absent a vested property interest, Police Chief Dirck could direct wrecker referrals within his discretion as plaintiff would have no more than a "unilateral expectation" as stated in Board of Regents of State Colleges v. Roth, 408 U.S. 564, 577 (1972), see also Elrod v. Burns, 427 U.S. 347, 353 (1976).

Upon further reflection and study the Court concludes that no wrecker referral property right was vested in plaintiff enforceable against Dirck under Okl.St.Ann. §951 et seq. Therefore, defendant's motion for judgment notwithstanding the verdict is sustained for the reasons hereafter stated.

47 Okl.St.Ann. §§ 952 and 955 state as follows:

"§952. Rules and Regulations

(A) The Department of Public Safety shall have the power and authority necessary to supervise, govern and control wreckers or towing services.

(B) The Department of Public Safety shall adopt and prescribe such rules and regulations as

are necessary to carry out the intent of Sections 951 through 961 of this title.

(C) Regulations adopted by the Department of Public Safety shall state the requirements for facilities, for storage of vehicles, necessary towing equipment, the records to be kept by operators, liability insurance and insurance covering the vehicle and its contents while in storage in such sum and with such provisions as the Department of Public Safety deems necessary to adequately protect the interests of the public, and such other matters as the Department may prescribe for the protection of the public.

(D) Wrecker or towing services provided by an operator at the request of a political subdivision of this state shall be provided in accordance with the provisions and regulations adopted pursuant thereto applied to wrecker or towing services contained in Section 955 of this title, unless otherwise regulated by the governing body of the political subdivision."

* * *

"§ 955. Removal of vehicle from highway - Grounds

"Any officer of the Department of Public Safety is hereby authorized to cause to be removed any vehicle found upon the highway when:

(1) Report has been made that such vehicle has been stolen or taken without the consent of its owner.

(2) The officer has reason to believe the vehicle has been abandoned as defined in Sections 901 and 902 of this title.

(3) The person driving or in control of such vehicle is arrested for an illegal offense for which the officer is required by law to take the person arrested or summoned before a proper magistrate without unnecessary delay.

(4) At the scene of an accident, when the owner or driver is not in a position to take charge of his vehicle and direct or request its proper removal.

Each officer of the Department shall carry a list of the holders of current Class A wrecker operator

licenses in the district of the officer, and shall use the services of the Class A licensed wrecker operator whose location is nearest to the vehicle to be removed in all instances specified under subsections (1), (2), (3) and (4) of this section. The requests for services may be alternated among all such licensed wrecker operators who are located within a reasonable radius of each other. In like manner, such officer shall advise any person requesting information as to the availability of a wrecker service, the name of the nearest Class A licensed wrecker operator, giving equal consideration to all Class A licensed wrecker operators located within a reasonable radius of each other. In cities of less than fifty thousand (50,000) population, all such licensed wrecker operators located near or in the city limits of such cities shall be considered as being equal distance and shall be called on an equal basis as nearly as possible.

"Any officer of the Department who has been requested by a person in need of wrecker service to call a specific wrecker service for such person, and who calls a different wrecker service other than the one requested, without the consent of such person, except where hazardous conditions exist, shall be suspended from the Department, without compensation, for a period of thirty (30) days, except in instances where a vehicle is removed from the road under the authority of subsections (3) and (4) of this section."

The plaintiff reasons that under §951 et seq., an officer is defined as " ... any peace officer", so §952(D) must refer (although it does not so state) to any peace officer of a political subdivision, as is the City of Catoosa, Oklahoma. Under plaintiff's interpretation of §952(D), the City of Catoosa and its peace officers, such as Police Chief Dirck, must employ the same method of selecting licensed wrecker services as is required of officers of the Department of Public Safety under §955. Thus, the Court is presented with the interesting and troublesome question of legislative construction.

The introductory sentence of §955 states:

"Any officer of the Department of Public Safety is hereby authorized to cause to be removed any vehicle found upon the highway when: * * *."

Section 951 defines "Department" as Department of Public Safety and "Officer" as any peace officer. Therefore, §955 is limited by its reach to peace officers of the Department of Public Safety. Plaintiff claims that §952(D) extends the reach of §955 to municipal peace officers.

Section 952 authorizes the Department of Public Safety to adopt and prescribe such rules and regulations as are necessary to carry out the intent of 47 Okl.St. Ann. §951 et seq. No Department of Public Safety regulations were called to the Court's attention or offered in evidence herein bearing on the issue. Section 952(D) authorizes the governing body of a municipality to otherwise regulate wrecker and towing services should it choose to do so. The record indicates the City of Catoosa had no formal regulations concerning wrecker service.

47 Okl.St. Ann. §956(B) states:

"(B) No officer of the Corporation Commission, the Department of Public Safety, or any law enforcement officer of any political subdivision of the state shall have any interest, financial or otherwise in a wrecker or towing service, nor shall a wrecker or towing service employ such officer."

It is clear from this language that the Legislature noted the difference between officers of the Department of Public Safety and law enforcement officers of any political subdivision of the state. Had the legislature intended §955 restricting

wrecker referrals to apply to officers of any political subdivision, it could and should have so stated in §952(D) or elsewhere. One reasonable interpretation of §952(D) is that when a political subdivision requests wrecker or towing services, a peace officer of the Department of Public Safety shall handle these requests in the same manner as directed in §955, "... unless otherwise regulated by the governing body of the political subdivision."

Article 5, §57 of the Oklahoma Constitution states:

"Every act of the Legislature shall embrace but one subject, which shall be clearly expressed in its title, except general appropriation bills, general revenue bills, and bills adopting a code, digest, or revision of statutes; and no law shall be revived, amended, or the provisions thereof extended or conferred, by reference to its title only; but so much thereof as is revived, amended, extended, or conferred shall be re-enacted and published at length: Provided, That if any subject be embraced in any act contrary to the provisions of this section, such act shall be void only as to so much of the law as may not be expressed in the title thereof."

The title of the Act, 47 Okl.St. Ann. §951 et seq., states:

"An Act relating to motor vehicles; defining terms; providing for regulation of wreckers and towing services; granting jurisdiction to Corporation Commission to issue licenses; fixing fees and vesting authority of enforcement in Department of Public Safety; authorizing the adoption of rules and regulations; prescribing authority and duties of the Department of Public Safety; prohibiting gifts; prohibiting financial interest; allowing independent employment of wrecker or towing services; providing for penalties; and making provisions of act severable."

The title to the act speaks of the jurisdiction of the Oklahoma Corporation Commission and the authority of the Department of

Public Safety. Nowhere in the title of the Act does it state or suggest that its provisions are binding upon municipalities. The cases of State ex rel. Dabney, Atty. Gen. v. Sheldon, 276 P. 468 (Okl. 1929) and Poafpybitty v. Skelly Oil Company, 394 P.2d 515 (Okl. 1964), indicate that the legislative intent may be gleaned from the title of the act. The title to the act does not suggest that the act has any binding effect on officials of municipalities. Therefore, the Court will not infer such legislative intent. Section 952(D) does not impose a legal duty upon peace officers of Catoosa, Oklahoma to rotate wrecker referrals as is required of officers of the Department of Public Safety in §955.

The interpretation of §952(D) urged by plaintiff requires a liberal construction of its language by implying that it requires peace officers of a municipality to rotate wrecker service in accordance with the provisions of §955. A rule of statutory construction is that statutes in derogation of public or private rights must be strictly construed. 73 Am.Jur.2d Statutes, §283 states:

"A rule of strict construction is generally applied to the interpretation of statutes in derogation of rights, either of the public or of individuals, or in derogation of their natural rights, or rights which have been enjoyed from time immemorial. This rule prevails in cases of statutes which are in derogation of contract rights, or which impose restrictions on the conduct of business, or which are restrictive of a free economy. The scope of such statutes is not to be extended beyond the usual meaning of their terms. Indeed, no act should be construed as infringing upon such rights except by clear, unambiguous, and peremptory language. The burden lies on those who seek to establish that the

legislature intended to take away the private rights of individuals, to show that by express words or by necessary implications such an intention appears. * * *

While §955 does require a rotation among licensed wrecker operators, it is restrictive of the conduct of business and a free economy.

A strict construction is a narrow construction confining the operation of the statute to matters specifically pointed out by its terms and to cases which fall within its letter or the clear, plain, and obvious reading of the language used. 73 Am.Jur.2d Statutes §274.

A basic rule of statutory construction is that statutes in derogation of the common law are to be strictly construed. Philadelphia Gear Corp. v. F.D.I.C., 587 F.Supp. 294 (W.D.Okla. 1984). An application of strict construction to the subject act produces the conclusion that §955 is limited to peace officers of the Department of Public Safety and does not apply to peace officers of a municipality, nor does §952(D) broaden that application to municipalities and its peace officers.

Therefore, as the plaintiff's §1983 claim hinges on his being vested with a property right to wrecker referrals under 47 Okl.St. Ann. §951 et seq., enforceable against the defendant Police Chief Dirck, and the Court having concluded that no such enforceable right exists, the defendant Dirck's motion for judgment notwithstanding the verdict is hereby sustained.²

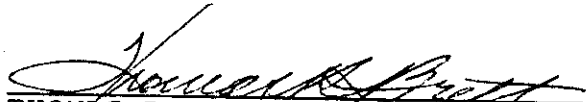
² For the reasons expressed herein it is not necessary to address defendants' argument that no property interest was vested in plaintiff because the municipality was vested with authority to otherwise regulate wrecker service as provided in 47 Okl.St. Ann. §952(D).

It is not therefore necessary to address the defendant's alternative motion for new trial.

A separate Amended Judgment in keeping with the Court's Order herein shall be filed contemporaneous herewith.

The respective parties' applications for award of attorneys' fees is hereby overruled because the Court does not conclude plaintiff's action was frivolous. Christianburg Garment Co. v. EEOC, 434 U.S. 412, 90 S.Ct. 694, 54 L.Ed.2d 648 (1978), and Hughes v. Rowe, 449 U.S. 5, 66 L.Ed.2d 163, 101 S.Ct. 173 (1980).

IT IS SO ORDERED this 3rd day of March, 1986.


THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

FILED

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

MAR -3 1986

JACK C. SILVER, CLERK
U.S. DISTRICT COURT

WILLIAM H. SANDERS,

Plaintiff,

v.

EASTERN STATE HOSPITAL,
et al.

Defendants.

No. 85-C-1108-C


O R D E R

The Court has for consideration the Findings and Recommendations of the Magistrate filed on February 5, 1986 in which the Magistrate recommends that the Petition for Writ of Habeas Corpus be denied. No exceptions or objections have been filed and the time for filing such exceptions or objections has expired.

After careful consideration of the record and the issues presented by the Petition for Writ of Habeas Corpus, the Court has concluded that the Findings and Recommendations of the Magistrate should be and hereby are affirmed and adopted as the Findings and Conclusions of this Court.

It is therefore Ordered that the Petition for Writ of Habeas Corpus be and is hereby dismissed.

It is so Ordered this 28th day of February, 1986.


H. DALE COOK
CHIEF JUDGE

IN THE UNITED STATES COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

FILED

MAR -3 1986


CLERK OF COURT
U.S. DISTRICT COURT


IN RE:
KENNETH E. TUREAUD, a/k/a)
KENNETH E. TUREAUD, d/b/a)
SAKET PETROLEUM COMPANY, a/k/a)
KENNETH E. TUREAUD, d/b/a)
KESAT, a/k/a SAKET PETROLEUM)
COMPANY, a/k/a SAKET DEVELOP-)
MENT COMPANY, d/b/a LINDA)
VISTA CORPORATION, d/b/a)
SAKET DEVELOPMENT CORPORATION,)
a New Mexico corporation,)
a/k/a DEER PARK, INC., d/b/a)
SAKET REALTY, INC., d/b/a)
SAKET LAKES DEVELOPMENT)
CORPORATION, d/b/a RIVER RIDGE)
DEVELOPMENT CORPORATION,)
Debtor.)
R. DOBIE LANGENKAMP,)
Trustee,)
Plaintiff,)
vs.)
CITIZENS TRUST f/k/a ANN)
ARBOR TRUST COMPANY,)
Defendant.)

CASE NO. 85-C-846-C

AGREED VOLUNTARY DISMISSAL

The parties hereto, by agreement, hereby dismiss the
above-referenced appeal pursuant to Bankruptcy Rule 8001(c).


Sam G. Bratton II
Attorney for
R. Dobie Langenkamp


Dale J. Gilsinger
Attorney for Citizens Trust

FILED

MAR 3 1986

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

Jack C. Silver, Clerk
U. S. DISTRICT COURT

KSM FASTENING SYSTEMS INC., a
New Jersey corporation,

Plaintiff,

vs.

REFRACTORY ANCHORS, INC., an
Oklahoma corporation, and
DAVID R. DUNLAP, an individual,

Defendants.

CIVIL ACTION NO.
84-C-622-E

CONSENT DECREE AND JUDGMENT

The Plaintiff, KSM Fastening Systems Inc., having filed its Complaint herein on July 10, 1984 against the Defendants, Refractory Anchors, Inc. and David R. Dunlap, and the Defendants, Refractory Anchors, Inc. and David R. Dunlap, having entered an Answer and Counterclaim, the Plaintiff, KSM Fastening Systems Inc., having answered the Counterclaim, and the parties having considered the matter on its merits and the Defendants having consented to the entry of this Consent Decree and Judgment to be binding upon the Defendants, their agents, employees and representatives and all persons in active concert or participation with the Defendants who receive notice thereof;

NOW, THEREFORE, upon the consent of the parties

hereto,

It is ORDERED, ADJUDGED and DECREED that final judgment in favor of the Plaintiff, KSM Fastening Systems Inc., and against the Defendants, Refractory Anchors, Inc. and David R. Dunlap, be entered as follows:

1. This court has jurisdiction of the subject matter of all counts of this action and over all of the parties hereto.

2. Venue in this matter is proper.

3. The Plaintiff is the rightful owner of and has all right, title and interest in and to United States Patent No. 3,738,217 issued June 12, 1973.

4. U.S. Patent No. 3,738,217 issued June 12, 1973 was duly issued by the United States Patent Office and is a valid and existing patent entitled to full protection under the patent laws of the United States of America.

5. The product line of the Defendant Refractory Anchors, Inc. known as the FIBER STUD and as illustrated in Exhibit A attached hereto constitutes an infringement of United States Patent No. 3,738,217 issued June 12, 1973.

6. The Defendants, Refractory Anchors, Inc. and David R. Dunlap, and their respective successors, assigns, affiliates, agents, servants, employees and representatives, and all persons, firms, and corporations in active concert

or participation with these Defendants who receive notice hereof, be and hereby are enjoined and restrained from making, using or selling insulation hangers or refractory anchors of the type and nature identified in Exhibit A attached hereto for the remainder of the life of United States Patent No. 3,738,217 issued June 12, 1973.

7. Damages for past infringement prior to the date of this Consent Decree and Judgment by the manufacture, use and sale of infringing articles by the Defendants are hereby excused.

8. Each party hereto shall bear its own attorneys fees and costs.

9. This court shall retain jurisdiction to construe, enforce or implement this Decree upon the application of any party.

10. Upon entry of this Consent Decree and Judgment, an appropriate Order of Dismissal, with prejudice, of the Complaint and Counterclaim shall be entered by the court.

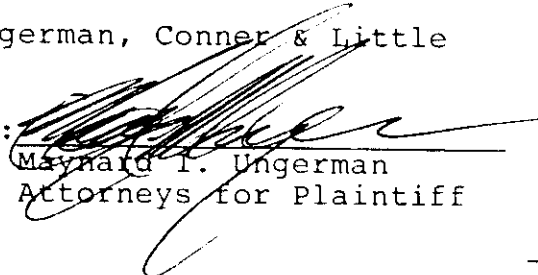
Signed and entered this _____ day of _____, 1986.

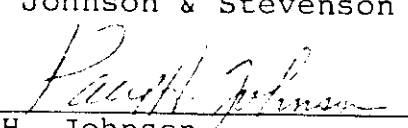
U.S.D.J.

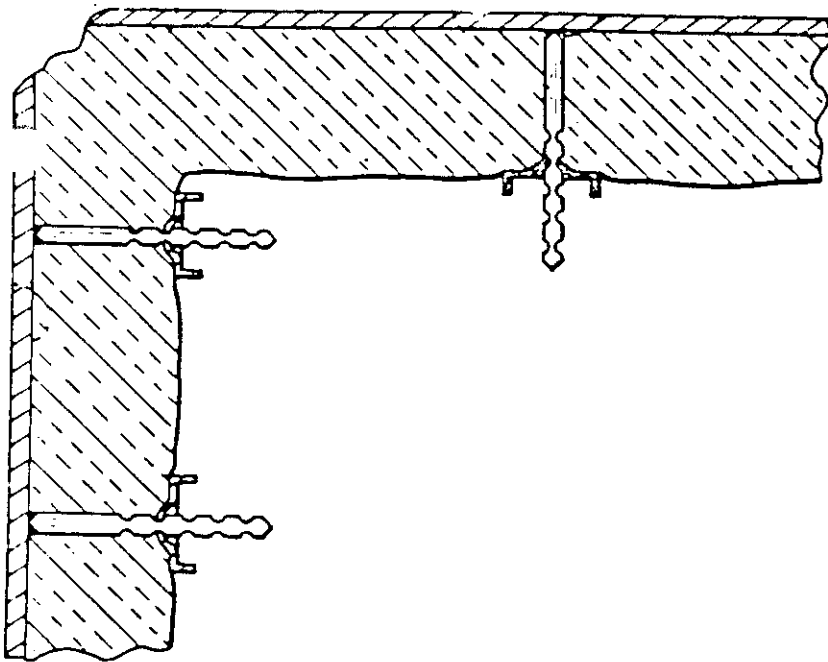
Approved:

Ungerman, Conner & Little

Head, Johnson & Stevenson

By: 
Maynard I. Ungerman
Attorneys for Plaintiff

By: 
Paul H. Johnson
Attorney for Defendants



PLAINTIFF'S
EXHIBIT
P-1

RA-1



REFRACTORY ANCHORS, INC.

P. O. BOX 1321

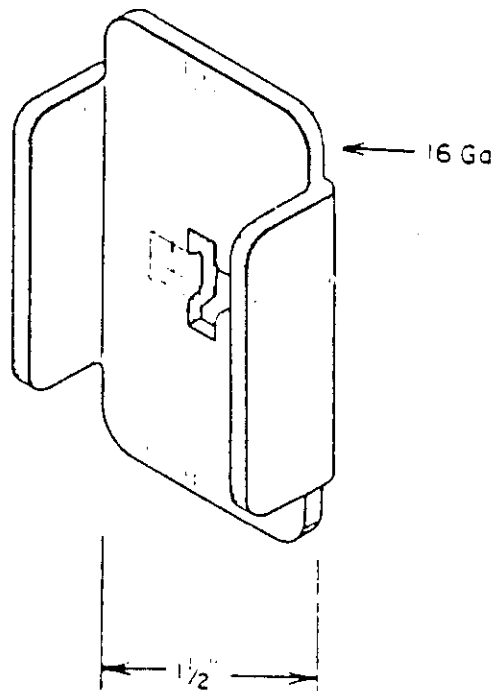
BROKEN ARROW, OK 74013-1321

CALL TOLL FREE 1-800-331-3270

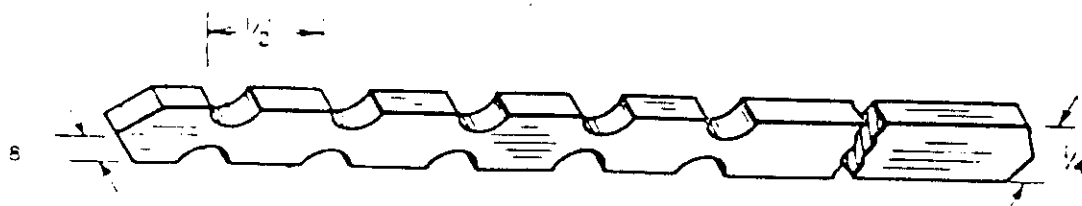
IN OKLAHOMA CALL (918) 258-5636

WASHER

FIBER STUD



PATENT PENDING



STUD

CUSTOMER SPECIFY

Exhibit A

94

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

SHARON L. CREEKMORE,

Plaintiff,

vs.

RANDY DURAN, GARY HENDERSON,
DRUMRIGHT MEMORIAL HOSPITAL
FOUNDATION, an Oklahoma corpor-
ation, and STATE OF OKLAHOMA,
ex rel. THE OKLAHOMA HUMAN
RIGHTS COMMISSION,

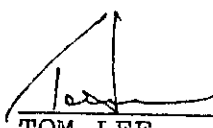
Defendants.

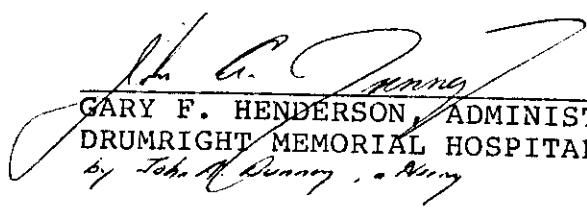
No. 85-C-613-C

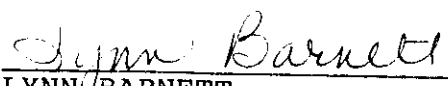
FILED
MAR -3 1986
JACK D. GILMER, CLERK
U.S. DISTRICT COURT

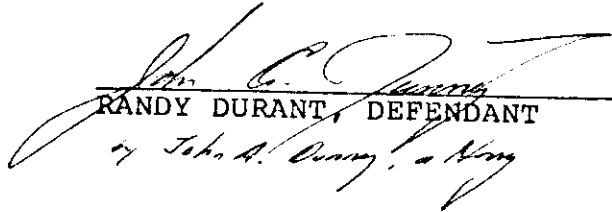
STIPULATION OF DISMISSAL

COMES NOW the parties herein named and agree to the dismissal
with prejudice of the Oklahoma Human Rights Commission as a party
Defendant in the aforesaid cause of action.


TOM LEE
ATTORNEY FOR PLAINTIFF


GARY F. HENDERSON, ADMINISTRATOR
DRUMRIGHT MEMORIAL HOSPITAL
by John A. Dunning, a Notary


LYNN BARNETT
ASSISTANT ATTORNEY GENERAL
ATTORNEY FOR HUMAN RIGHTS COMMISSION


RANDY DURANT, DEFENDANT
by John A. Dunning, a Notary

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

FILED

MAR -3 1986

JERRY ALLEN TAYLOR,

Plaintiff,

VS.

T K INTERNATIONAL, INC., and
SHOPMEN'S LOCAL UNION 620,

Defendant.

No. 83-C-387-C

JACK C. SHIVERS, CLERK
DISTRICT COURT

ORDER SUSTAINING MOTION FOR DIRECTED VERDICT
BY DEFENDANT, SHOPMEN'S LOCAL UNION 620

COMES NOW before me, the undersigned Judge, on this 12th day of February, 1986, the above-captioned case for trial by jury pursuant to regular docket setting.

The Plaintiff appears in person, pro se; the Defendant, T K International, appears by and through its attorney, Mary T. Matthies, and the Defendant, Shopmen's Local Union 620, appears by and through its attorney, Thomas F. Birmingham. The jurors, being first duly sworn and seated, heard opening statements of the Plaintiff, opening statements of the Defendants and the Plaintiff proceeded to present witnesses in open court and present exhibits in open court, said witnesses and exhibits being subject to cross-examination by the Defendants.

On February 13th, the Plaintiff informed the court that he had presented his entire case and announced to the court that he was resting his case.

At the conclusion of the Plaintiff's case, the Defendant, Shopmen's Local Union 620, by and through its attorney, Thomas F. Birmingham, moved pursuant to Rule 50(a) of the Federal Rules of Civil Procedure for a

LAW OFFICES

UNGERMAN,
CONNER &
LITTLE

3. DAY BLDG.
2. EAST 21 ST.
SUITE 400

P. O. BOX 2099
TULSA, OKLAHOMA
74101

directed verdict at the close of the evidence of the Plaintiff on the grounds and for the reasons that the evidence taken in the most favorable light to the Plaintiff completely failed to state a cause of action against the Defendant, Shopmen's Local Union 620 based on any elements of liability found in 42 U.S.C. §1981.

The Court having considered all the evidence and exhibits presented to it finds that the Motion for Directed Verdict by the Shopmen's Local Union 620 be sustained and that the Plaintiff's case be dismissed against the Defendant, Shopmen's local 620.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED by the Court that the Motion for Directed Verdict pursuant to Rule 50(a) Federal Rules of Civil Procedure presented by Shopmen's Local Union 620 be and the same is hereby granted and the above-entitled cause of action be dismissed as against the Defendant, Shopmen's Local Union 620.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED by the Court that Shopmen's Local Union 620 is a "prevailing party" and that the above captioned action was brought under the Civil Rights Statutes of the United States of America and therefore the Defendant, Shopmen's Local 620 is entitled to its reasonable attorney's fees and costs expended herein, the same being awarded as a judgment after the Defendant Shopmen's Local Union 620 has made the appropriate applications to the Court and the Court Clerk for said fees and costs.

Done this 13th day of February, 1986.

(Signed) H. Dale Cook

UNITED STATES DISTRICT JUDGE